

HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                     )  
  )  
Application for                        )  
Certification for the                 ) Docket No. 99-AFC-5  
OTAY MESA GENERATING               )  
PROJECT (PG&E Generating)         )  
\_\_\_\_\_ )

SAN DIEGO COUNTY ADMINISTRATION BUILDING  
  
ROOMS 302 and 303  
  
1600 PACIFIC HIGHWAY  
  
SAN DIEGO, CALIFORNIA

TUESDAY, NOVEMBER 21, 2000

9:50 A.M.

Reported by:  
Valorie Phillips  
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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Robert Laurie, Presiding Member

Robert Pernell, Associate Member

STAFF PRESENT

Susan Gefter, Hearing Officer

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Commissioner Laurie

Ellen Townsend-Smith, Advisor to  
Commissioner Pernell

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## 1 P R O C E E D I N G S

2 3:05 p.m.

3 PRESIDING MEMBER LAURIE: Good morning,  
4 my name is Robert Laurie, Commissioner of the  
5 California Energy Commission, a Member of the  
6 Siting Committee hearing the Otay Mesa Generation  
7 Project case.

8 With me on the dais is Commissioner  
9 Robert Pernell, my colleague on the Siting  
10 Committee.

11 To my immediate left is Ms. Susan  
12 Gefter, the Hearing Officer administering the  
13 proceeding. And to my right is Mr. Scott  
14 Tomashefsky, my Senior Advisor. Ms. Ellie  
15 Townsend-Smith, Commissioner Pernell's Advisor,  
16 will be joining him shortly.

17 What we'd like to do at this time is  
18 just take a moment and talk about today's agenda.  
19 And what our expectations are and what your  
20 expectations may be, as well.

21 Ms. Gefter, did you want to do  
22 introductions for the record first, or how do you  
23 want to handle it.

24 HEARING OFFICER GEFTER: Yes. Before we  
25 start we'll ask the parties to introduce



1 themselves for the record, starting with the  
2 applicant.

3 MR. THOMPSON: Allan Thompson, one of  
4 counsel to PG&E National Energy Group.

5 MR. CARROLL: Mike Carroll, Latham and  
6 Watkins for PG&E National Energy Group.

7 MR. HANSCHEN: Peter Hanschen, Morrison  
8 and Foerster, PG&E National Energy Group.

9 MS. SEGNER: Sharon Segner, PG&E  
10 National Energy Group.

11 HEARING OFFICER GEFTER: And for staff.

12 MR. OGATA: I'm Jeff Ogata, I'm CEC  
13 Staff Counsel. Eileen Allen, Project Manager, is  
14 in the audience right now. And we have some staff  
15 people here from the Commission.

16 HEARING OFFICER GEFTER: And Intervenor  
17 Cabrillo Power.

18 MR. GOLDMAN: Matt Goldman, Livingston  
19 and Mattesich, for Intervenor Cabrillo.

20 MR. VARANINI: Gene Varanini, Livingston  
21 and Mattesich, for Cabrillo.

22 HEARING OFFICER GEFTER: Duke Energy.

23 MS. LUCKHARDT: Jane Luckhardt from  
24 Downey Brand for Duke Energy North America.

25 MR. SEEDALL: Mark Seedall, Duke Energy

1 North America.

2 HEARING OFFICER GEFTER: And Intervenor  
3 Holly Duncan.

4 MS. DUNCAN: Holly Duncan, mother of an  
5 asthmatic intervenor.

6 HEARING OFFICER GEFTER: And Mr.  
7 Claycomb.

8 MR. CLAYCOMB: William E. Claycomb,  
9 President, Save Our Bay, Inc., Intervenor.

10 HEARING OFFICER GEFTER: Thank you. Can  
11 people who are sitting in the back hear us? Yes.  
12 Okay, thank you.

13 This morning we're going to take  
14 evidence on the dual fuel alternatives issue that  
15 came up last week, and we had intended to hear it  
16 yesterday, but we ran rather late.

17 If there are witnesses on that topic  
18 available this morning, I understand the applicant  
19 has a witness, let us go forward with that topic  
20 first.

21 Then we will hear air quality, and then  
22 we'll hear public health. The entire day is  
23 dedicated to these topics.

24 At the end of the presentation on air  
25 quality we understand that members of the public

1       may have public comment, and you'll be welcome at  
2       that point to come forward and address the  
3       Committee.

4               Now, we're ready to go forward on the  
5       dual fuel issue unless there are some housekeeping  
6       matters that may be of concern with respect to  
7       exhibits or any other items at this point.

8               MR. GOLDMAN:   Ms. Gefter.

9               HEARING OFFICER GEFTER:   Yes.

10              MR. GOLDMAN:   It wasn't clear to me last  
11       night whether or not the two charts that were  
12       passed out last night to accompany the testimony  
13       of Mr. Weatherwax were marked into the record.

14              As I understand it they are effectively  
15       errata to the chart that was included in the  
16       materials that have been marked as exhibit 72.

17              HEARING OFFICER GEFTER:   That was my  
18       understanding of those two charts, and that's how  
19       I marked them.   They will be incorporated into  
20       exhibit 72 as errata if there's no objections from  
21       any of the other parties.

22              (Off-the-record microphone discussion.)

23              HEARING OFFICER GEFTER:   Are there any  
24       other housekeeping matters with respect to  
25       exhibits or other items?

1                   MR. OGATA: Ms. Gefter, yesterday at the  
2 beginning you had announced that you weren't sure  
3 whether SDG&E's testimony exhibit 73 had been  
4 entered into the record, and you had added exhibit  
5 76, their prehearing conference statement, with  
6 the statement that you may have to ask them to  
7 come back to sponsor these exhibits.

8                   My records indicate that exhibit 73 was  
9 moved into evidence, so I believe at least -- my  
10 records aren't the best, but I'm usually pretty  
11 good about that. So, I believe that one's moved  
12 in.

13                  Now, with respect to exhibit 76 I  
14 believe that was an exhibit that you added. And  
15 so we were wondering whether or not, especially  
16 since I don't believe there was a witness or a  
17 signatory with respect to the conference, and, you  
18 know, what effect that has with respect to  
19 evidence.

20                  So I just wanted to find out from you  
21 what part of that you were interested in. And I  
22 think Mr. Thompson had indicated that assuming  
23 that there are no objections from all the parties,  
24 perhaps we could just stipulate that those could  
25 be admitted and we wouldn't have to bring San

1 Diego back.

2 HEARING OFFICER GEFTER: All right.

3 Well, I understand exhibit 73 was actually  
4 received on November 14th, so thank you for that.

5 And exhibit 76, I have to look at that  
6 again. And then indicate to the parties on the  
7 next, December 4th, our next hearing, whether or  
8 not we need to receive that into the record.

9 Thank you.

10 If there's no other housekeeping matter,  
11 let us go forward on the dual fuel issue.

12 MR. OGATA: Excuse me, Ms. Gefter, one  
13 more thing. I'm sorry, but --

14 HEARING OFFICER GEFTER: Oh, I'm sorry.

15 MR. OGATA: At the end of the evening  
16 last night there was also a procedural matter with  
17 respect to Mr. Filippi's rebuttal testimony. And  
18 I don't know if we were on the record when you  
19 announced what we were going to do with that.

20 I believe Otay Mesa was going to prepare  
21 something in writing that would be submitted to  
22 all the parties. And then there would be cross-  
23 examination available based on that, I understand,  
24 at the December 4th. At least that's my  
25 understanding. I just wanted to confirm with you

1 and with the applicant that's correct.

2 MR. HANSCHEN: That's my understanding,  
3 also, is I believe you said submit the written  
4 testimony --

5 HEARING OFFICER GEFTER: The reporter  
6 can't hear you.

7 MR. HANSCHEN: That's my understanding,  
8 also is -- my understanding is we're to submit the  
9 written rebuttal testimony by December 1st.

10 HEARING OFFICER GEFTER: That was  
11 correct. And that was on the record, I believe.

12 MR. OGATA: Thank you.

13 HEARING OFFICER GEFTER: The witness  
14 will sit next to the reporter at this point.

15 MR. THOMPSON: Thank you, Ms. Gefter.  
16 Applicant would like to call Mr. Al Williams. Mr.  
17 Williams has been previously sworn.  
18 Whereupon,

19 ALAN WILLIAMS  
20 was recalled as a witness herein and having been  
21 previously duly sworn, was examined and testified  
22 further as follows:

23 DIRECT EXAMINATION

24 BY MR. THOMPSON:

25 Q Would you please state your name for the

1 record.

2 A Alan Williams.

3 Q Mr. Williams, you are here today  
4 testifying on the subject of alternatives. You  
5 have previously testified on certain alternatives.  
6 Today the ones remaining that are your  
7 responsibility and the appropriate sections of  
8 exhibit 1, which is the AFC, are the following:  
9 section 3.11.3, which is entitled alternative  
10 technologies and equipment; and section 311-8,  
11 steam injection.

12 Is that a correct summation of your  
13 testimony for today?

14 A Yes, it is.

15 Q Thank you.

16 MR. THOMPSON: Mr. Williams is tendered  
17 for cross-examination.

18 HEARING OFFICER GEFTER: Does staff have  
19 cross-examination?

20 MR. OGATA: Staff has no questions.

21 HEARING OFFICER GEFTER: Intervenor  
22 Cabrillo.

23 MR. GOLDMAN: Could I have a  
24 clarification as to the sections of the AFC? I'm  
25 sorry I wasn't writing them down when Mr. Thompson

1       said -- there were two sections, I believe?

2               MR. THOMPSON:   Yes, 311.3 and 331.8.

3               MR. GOLDMAN:   Okay, thank you.   No, we  
4       have no cross-examination.

5               HEARING OFFICER GEFTER:   Does Duke?

6               MS. LUCKHARDT:   No.

7               HEARING OFFICER GEFTER:   Do either of  
8       the other intervenors, Ms. Duncan, Mr. Claycomb?

9               MR. CLAYCOMB:   No.

10              HEARING OFFICER GEFTER:   Thank you.

11       Thank you, Mr. Williams.

12              Are there any other witnesses from any  
13       party on the topic of dual fuel alternatives?

14              We can go forward then on the topic of  
15       air quality.

16              MR. THOMPSON:   I believe so.

17              HEARING OFFICER GEFTER:   All right.   Mr.  
18       Thompson, do you -- Mr. Goldman.

19              MR. GOLDMAN:   Thank you.   As I  
20       understand it, Eileen Allen of the staff was to  
21       present testimony and be subject to cross-  
22       examination on the dual fuel alternative.   I  
23       believe it's on the agenda of the hearing.

24              MR. OGATA:   Yes, Mr. Goldman is correct.  
25       That was on the agenda.   However, that was not



1 proposed by staff. And she would not be the  
2 appropriate person, as a technical matter, to  
3 discuss that issue.

4 If there's something in the testimony on  
5 alternatives that she authored, I'm sure it's in a  
6 very general way, or it might paraphrase some  
7 other technical person, but I hate to speak for  
8 her, but I think she would agree. She clearly is  
9 not qualified to get into any technical aspects of  
10 dual fuel.

11 MR. GOLDMAN: Well, I would like to ask  
12 her questions about the alternative section of the  
13 FSA that she did author. And I recognize that  
14 they are general comments. And, of course, my  
15 questions will be commensurately general --

16 HEARING OFFICER GEFTER: Mr. Goldman,  
17 you already asked Ms. Allen questions about the  
18 alternative section. And --

19 MR. GOLDMAN: No, no, as a matter for  
20 the record that is not true. In fact, it was  
21 deferred to the alternatives section. I did not  
22 ask her a question about --

23 HEARING OFFICER GEFTER: You mean with  
24 respect to dual fuel.

25 MR. GOLDMAN: No. What I asked her

1 questions about were the executive summary and the  
2 introduction that she did author. I did not ask  
3 her questions about the alternatives section of  
4 the FSA.

5 HEARING OFFICER GEFTER: And why didn't  
6 you?

7 MR. GOLDMAN: Because I was told that  
8 that would be raised at a different time. That  
9 was, I think, the very first day of our  
10 evidentiary hearings on the 13th of November.

11 HEARING OFFICER GEFTER: Well, the  
12 Committee has asked staff to come forward with  
13 additional information on alternatives with  
14 respect to smaller plant alternatives and other  
15 technology alternatives, such as microturbines, as  
16 Ms. Duncan has discussed.

17 That testimony will be due on December  
18 1st. We've already talked about that. I would  
19 like to defer any further discussion on  
20 alternatives until we have all of staff's  
21 testimony in on alternatives. And let's defer  
22 that to December 4th.

23 MR. GOLDMAN: All right, then. And for  
24 the record I don't know that my questioning will  
25 deal with the specific concerns that Ms. Duncan

1 had, but to the extent that we can have all the  
2 cross-examination at one time, I think that's  
3 fine.

4 HEARING OFFICER GEFTER: We will receive  
5 staff's additional testimony December 1st. You'll  
6 have an opportunity to look at it. And then we'll  
7 discuss the entire topic on December 4th.

8 MR. GOLDMAN: Very well.

9 PRESIDING MEMBER LAURIE: Ms. Gefter,  
10 before we start getting witnesses, I would request  
11 that we get a summary of the parties', of their  
12 intentions regarding witnesses to be presented, so  
13 we can gauge the day accordingly.

14 Just five minutes on summarizing today's  
15 activities, and the witnesses that each party  
16 intends to present on the issues.

17 MR. CARROLL: Applicant will be  
18 presenting one witness each on the topics of air  
19 quality and public health. We expect the direct  
20 testimony to be very short, less than a minute for  
21 each.

22 There is a possibility that we will want  
23 to present a rebuttal witness in response to Mr.  
24 Rubenstein's testimony, but that is something we  
25 have not yet determined. If we do present that

1 witness, it would be relatively short.

2 HEARING OFFICER GEFTER: Staff.

3 MR. OGATA: Staff has one witness in the  
4 area of air quality and one witness in the area of  
5 public health. And we will also be sponsoring the  
6 testimony of the Air District with respect to the  
7 final determination of compliance.

8 And the District has been very  
9 cooperative in providing a number of witnesses  
10 from their staff today to respond to whatever  
11 questions the Committee may have in this area.

12 HEARING OFFICER GEFTER: Thank you.  
13 Cabrillo.

14 MR. VARANINI: We have a witness, Gary  
15 Rubenstein, who will basically discuss the direct  
16 impacts on the air resource from the relationship  
17 between the Otay project and the operations of --  
18 induced operations on Cabrillo and on the South  
19 Bay Plants.

20 If Mr. Caldwell is going to be called  
21 today, we have substantial questions of him on his  
22 testimony which effectively and substantially is  
23 advice to us. We'd like to have a discussion  
24 about that on the record.

25 And then we have very few questions for

1 the staff and for any of the local officials who  
2 might be called today.

3 HEARING OFFICER GEFTER: Duke.

4 MS. LUCKHARDT: We will be asking some  
5 questions of Mr. Rubenstein to bring out some  
6 information regarding the South Bay Power Plant  
7 potential impacts.

8 HEARING OFFICER GEFTER: Intervenors Ms.  
9 Duncan?

10 MS. DUNCAN: I am the only witness, and  
11 all of my information has been submitted as  
12 documents. But I will have some questions based  
13 on what I've learned in the past few days of Mr.  
14 Layton. I will have questions possibly of our Air  
15 Pollution Control District. And possibly Mr.  
16 Rubenstein.

17 HEARING OFFICER GEFTER: Mr. Claycomb.

18 MR. CLAYCOMB: Save Our Bay will have  
19 probably five minutes of questions best be asked  
20 during the public health portion. But if the  
21 hearing drags on, we do have to leave at 5:00. So  
22 we could move them up to air quality because  
23 they're so closely related.

24 MR. VARANINI: Ms. Gefter, I left one  
25 thing out. If Mr. Caldwell testifies we would

1       like to recall Mr. Weatherwax for two questions,  
2       since he is a risk assessment expert. We  
3       qualified him in that field yesterday, and Mr.  
4       Caldwell, in his advice to us, has some  
5       suggestions that have risk assessment implications  
6       for their implementation.

7               HEARING OFFICER GEFTER: That's with  
8       respect to the public health section?

9               MR. VARANINI: I think he's testifying,  
10       I'm not quite sure what exactly the testimony is,  
11       what it could be typified as, but it involves  
12       fuel, the relationship between what happens at  
13       Otay and then fuel options at the existing power  
14       plants.

15              HEARING OFFICER GEFTER: How long do you  
16       believe your direct testimony of Mr. Rubenstein  
17       will take?

18              MR. VARANINI: I think it will take  
19       about 20 minutes.

20              HEARING OFFICER GEFTER: All right. Why  
21       don't we get started. We do hope to end by 5:00,  
22       that is on the schedule. And we intend to keep to  
23       that schedule.

24              Mr. Carroll, are you ready to proceed  
25       for the applicant?

1                   MR. CARROLL: We are. The applicant  
2 would like to call Mr. Perry Fontana.

3                   HEARING OFFICER GEFTER: Mr. Fontana,  
4 come up and be sworn by the reporter.  
5 Whereupon,

6                   PERRY FONTANA  
7 was called as a witness herein and after first  
8 being duly sworn, was examined and testified as  
9 follows:

10                   DIRECT EXAMINATION

11 BY MR. CARROLL:

12               Q     Mr. Fontana, would you please state your  
13 name for the record.

14               A     Yes, my name is Perry Fontana.

15               Q     And what is your place of employment?

16               A     I'm employed by URS Corporation.

17               Q     And could you briefly describe your  
18 responsibilities with regard to the Otay Mesa  
19 Project?

20               A     Yes, I am the lead air quality analyst  
21 for the project. I prepared the air quality  
22 section of the AFC including the analysis of the  
23 baseline data and the air quality impact  
24 assessment based on emissions data provided by the  
25 project engineers.

1           I also prepared the authority to  
2       construct determination of compliance documents  
3       for submittal to the San Diego Air Pollution  
4       Control District.

5           Q     And your prepared testimony previously  
6       filed in this matter indicates that you are  
7       sponsoring a number of exhibits, including  
8       sections 1.8.2, 5.2 and appendix I of exhibit 1,  
9       which is the AFC, the authority to construct  
10      permit application to the San Diego Air Pollution  
11      Control District exhibit 2.

12               Exhibit 3, supplement to project  
13      dispersion modeling. Exhibit 11, response to data  
14      request 26. Exhibit 21, supplement to the ATC  
15      application. Exhibit 40, the preliminary  
16      determination of compliance. Exhibit 58, comments  
17      to the air quality preliminary staff assessment.  
18      Exhibit 61, response to intervenors of which you  
19      are a co-sponsor.

20               Are you sponsoring the exhibits that I  
21      just listed this morning?

22           A     Yes, I am.

23           Q     And could you briefly summarize your  
24      testimony?

25           A     Yes, the analysis, the air quality



1 impacts from the Otay Mesa Project show that the  
2 project will have minimal impacts on air quality  
3 in the San Diego region.

4 After considering the air quality  
5 improvements associated with the project's  
6 emission reduction credit package, and looking at  
7 the results of the air quality impact assessment,  
8 I believe there will be no adverse air quality  
9 impacts. And that the project will comply with  
10 all applicable laws, ordinances, regulations and  
11 standards.

12 Q Thank you. Does that conclude your  
13 testimony?

14 A Yes, it does.

15 MR. CARROLL: Mr. Fontana is tendered  
16 for cross-examination.

17 HEARING OFFICER GEFTER: Does staff have  
18 cross-examination?

19 MR. OGATA: Staff has no questions.

20 HEARING OFFICER GEFTER: Intervenor  
21 Cabrillo.

22 MR. GOLDMAN: Just a few questions.

23 CROSS-EXAMINATION

24 BY MR. GOLDMAN:

25 Q Mr. Fontana, I understand that Otay Mesa

1 is to use exclusively natural gas, is that  
2 correct?

3 A That's correct.

4 Q Did you do any analysis of the existing  
5 or projected natural gas supply for the San Diego  
6 region in connection with your analysis?

7 A No, I did not. That was not part of my  
8 scope on this project.

9 Q So, as I understand it, the scope of  
10 your project was on air quality as opposed to  
11 natural gas supply?

12 A Yes, that's correct.

13 Q in terms of that air quality analysis,  
14 did you do any analysis of the air emissions  
15 impact of natural gas curtailment on existing  
16 plants that might be caused by Otay Mesa's  
17 operation on natural gas?

18 A No, I did not.

19 Q And why was that?

20 A Based on the information provided by the  
21 project's gas reliability experts it was not a  
22 reasonable scenario to analyze.

23 Q Do you recall the criteria that you used  
24 to determine whether or not the scenario was  
25 reasonable or not reasonable to analyze?

1           A     The information provided by the  
2     project's gas reliability experts indicated that  
3     there was -- that the Otay Mesa project would not  
4     contribute to any curtailments that would require  
5     such an analysis.

6           Q     In connection with your review of the  
7     gas reliability expert's information, did you  
8     review any modeling analysis?

9           MR. CARROLL: I'm going to object. I  
10    don't think Mr. Fontana testified that he reviewed  
11    the analysis conducted by the gas reliability  
12    experts. I believe what he said is that he relied  
13    on their conclusions.

14           HEARING OFFICER GEFTER: Okay.

15    BY MR. GOLDMAN:

16           Q     Is that accurate?

17           A     Yes, I did not review any modeling. I  
18    relied on the conclusions.

19           Q     Okay. So in terms of relying on the  
20    conclusions do I understand you correctly that you  
21    didn't look at the underlying data, but rather  
22    just the conclusions?

23           A     No, I did not look at the underlying  
24    data.

25           Q     Okay. If I could direct you to exhibit

1       1, the AFC, within section 5.2 air quality, at  
2       page 5.2-27, in section 5.2.3 environmental  
3       consequences, in the second and last paragraph of  
4       that subsection there's a discussion about  
5       California's deregulated power market.

6               And then a sentence that I will read to  
7       you and ask you a couple questions about. Quote,  
8       "The California ISO has identified the San Diego  
9       area as a location where power generation is  
10      highly needed to maintain system reliability."

11             My question is what did you mean by that  
12      statement?

13             A     That statement was provided by the  
14      project engineers.

15             Q     What is your understanding of the  
16      statement?

17             A     My understanding of the statement is  
18      that there's a need for the project.

19             Q     And in connection with the need for the  
20      project in terms of system reliability what, if  
21      any, is your understanding?

22             A     I did not perform any analysis of system  
23      reliability.

24             Q     Okay, so do I understand you correctly  
25      that that was a statement that was put in here by

1 other members of the team?

2 A Yes, that's correct.

3 Q Okay.

4 MR. GOLDMAN: I have no further  
5 questions.

6 HEARING OFFICER GEFTER: Duke Energy.

7 CROSS-EXAMINATION

8 BY MS. LUCKHARDT:

9 Q I have one question and you can tell me  
10 if this is something that you're sponsoring. Are  
11 you sponsoring Otay Mesa Generating Company's  
12 responses to comments of Holly Duncan, Intervenor?

13 A I am a co-sponsor of that; prepared  
14 certain of the responses, not all of them.

15 Q Okay. Did you prepare the response to  
16 comment HD-2?

17 A I don't have the comment in front of me.  
18 If you could read it, please?

19 HEARING OFFICER GEFTER: What exhibit  
20 are you referring to?

21 MS. LUCKHARDT: I am sorry to tell you  
22 that I don't know exactly which exhibit this is.  
23 Maybe the applicant can help me identify which  
24 exhibit this is a part of. I think it was with  
25 the initial large filing that you submitted.

1 MS. DUNCAN: It was part of their  
2 prehearing conference statement.

3 MS. LUCKHARDT: It was a part of the  
4 prehearing conference statement?

5 MS. DUNCAN: For the applicant.

6 HEARING OFFICER GEFTER: Exhibit 77, Mr.  
7 Thompson?

8 MR. CARROLL: I apologize, we've  
9 responded to a number of comments of the  
10 intervenors at a number of different times, so let  
11 us just sort out which of the --

12 MS. LUCKHARDT: Okay, it doesn't seem to  
13 have a date on it. At least on the copy that I  
14 have. There is a title, it's part of a group of  
15 applicant responses to comments of, and then  
16 there's the AARP, American Lung Association,  
17 comments of Holly Duncan.

18 MR. CARROLL: Yes, it's a part of  
19 exhibit 77.

20 MS. LUCKHARDT: Okay, great. So you  
21 don't have a copy of that? Maybe I could show you  
22 the statement, and you could tell me whether  
23 that's a part of your --

24 MR. FONTANA: Yeah, and I may have it  
25 here, I just want to make sure we're looking at

1 the same --

2 MS. LUCKHARDT: You may have it there?

3 MR. FONTANA: -- at the same comment.

4 BY MS. LUCKHARDT:

5 Q Okay, I'm looking at comment HD-2, it's  
6 what it's called. It starts off with Commissioner  
7 Robert A. Laurie's third revised scheduling order.

8 A Okay, what I have is a copy of something  
9 from my files, so I would need to know what the  
10 exact comment, to make sure I'm looking at the  
11 same comment.

12 Q Okay. I think what Mr. Allen just  
13 presented to you is probably the same document I'm  
14 looking at. And it's about -- it doesn't have  
15 page numbers on it, so you just have to flip  
16 through. About a third of the way through there's  
17 a separating page that says Holly Duncan.

18 HEARING OFFICER GEFTER: Off the record.

19 (Off the record.)

20 HEARING OFFICER GEFTER: Back on the  
21 record.

22 BY MS. LUCKHARDT:

23 Q Okay, comment HD-2, did you prepare that  
24 response?

25 A No, I did not.

1 Q Okay.

2 (Laughter.)

3 MR. FONTANA: But I know where the  
4 comment is now, thank you.

5 (Laughter.)

6 MS. LUCKHARDT: Okay, I have no further  
7 questions.

8 HEARING OFFICER GEFTER: Ms. Duncan, do  
9 you have questions of the witness?

10 MS. DUNCAN: Yes, I do. I'll try to  
11 make it very brief.

12 CROSS-EXAMINATION

13 BY MS. DUNCAN:

14 Q I would like to address the modeling  
15 that you did.

16 A Yes.

17 Q And I also want to refer to that under,  
18 I guess what I call the new scenario that has  
19 emerged here in the past few days, where we have  
20 identified some transmission problems, so there  
21 are scenarios that have been presented that  
22 possibly Otay Mesa Generation Project would be not  
23 working at full load.

24 Can you please tell me if all of your  
25 models were based on full load or reduced load?



1 If they were based on reduced load, how do the  
2 emissions change? Or do they change?

3 A Yes. The modeling was based on a wide  
4 range of loads, based on emissions and stack  
5 characteristics provided by the project engineers.  
6 The emissions do change for certain pollutants  
7 with load, and in some cases the maximum impacts,  
8 not necessarily the maximum emissions, would occur  
9 under loads other than full loads for pollutants  
10 such as particulate matter.

11 The emissions are really a function of  
12 flow, so that at 100 percent loads you would have  
13 the maximum emissions.

14 Q So my understanding is on a lower load  
15 you'd have less emissions of particulate matter,  
16 for example, is that what you're saying?

17 A Yes, that is my understanding from the  
18 project engineers.

19 Q Can you tell me which modeling scenarios  
20 you worked with to determine the insignificant  
21 impact to San Diego's air quality?

22 A For all pollutants or a specific  
23 pollutant?

24 Q Each one, if necessary. How did you  
25 arrive at that determination, I guess is my

1 question.

2 A Okay.

3 Q I have in my notes here you said that  
4 overall you believed that this project will have  
5 minimal impacts to air quality in San Diego  
6 County.

7 I'm trying to understand, since at both  
8 EPA and ARB you were still, as a power plant,  
9 considered a major source polluter.

10 I'm trying to reconcile as a lay person  
11 here, a statement like that. For me, it's a major  
12 disconnect that a power plant can have a minimal  
13 impact to the air quality in my neighborhood.

14 I'm trying to understand the applicant's  
15 position which is consistent that there are no  
16 significant impacts to air quality in my  
17 community.

18 PRESIDING MEMBER LAURIE: Ms. Duncan,  
19 let's do this, let's take a --

20 BY MS. DUNCAN:

21 Q So which model did you work with to  
22 arrive at that conclusion?

23 Does that help?

24 PRESIDING MEMBER LAURIE: Well, I was  
25 trying to get you to just restate your question.

1                   MR. FONTANA:  If it pleases the  
2           Commission I think I can try to address her  
3           question and hopefully provide some clarification  
4           on that.

5                   The determination of the power plant as  
6           a major source under the new source review  
7           regulations is based on the quantity of its  
8           emissions.

9                   Those emissions were then modeled using  
10          dispersion modeling techniques for pollutants such  
11          as carbon monoxide and nitrogen oxides.  The model  
12          was based on the industrial source complex model.  
13          For particulate matter modeling there were there a  
14          number of models run, including the ISC model, the  
15          CT screen model, and ultimately the AirMod model.

16                  The results of those models as presented  
17          in the AFC show that the project's impacts would  
18          be below significance criteria established by the  
19          EPA and the San Diego Air Pollution Control  
20          District.  And that's the basis for our  
21          conclusion.

22          BY MS. DUNCAN:

23                  Q       So part of your decision was based on  
24          what shows in my testimony as possibly a weak  
25          criteria level at my local Air Pollution Control

1 District? That their threshold levels are, shall  
2 we say, not as protective as other air pollution  
3 control districts in the state?

4 A I would refer that question --

5 Q That was part of your criteria?

6 A -- to the District. The criteria was  
7 the significance levels of the District --

8 MR. CARROLL: I'm going to object to the  
9 question, it assumes facts not in evidence.  
10 There's no indication that the standards in San  
11 Diego are any different from the standards applied  
12 throughout the rest of the state and the country.

13 HEARING OFFICER GEFTER: You may ask  
14 that question of the Air District.

15 MS. DUNCAN: I would like to object to  
16 what the applicant objected to. I have a document  
17 that documents that our standards are not what  
18 other standards are in the state as part of my  
19 testimony.

20 HEARING OFFICER GEFTER: Your objection  
21 is noted. Also, Mr. Carroll's objection is  
22 sustained. And you may ask the question of the  
23 Air District.

24 Go on to your next question.

25 //

1 BY MS. DUNCAN:

2 Q In a less than full load situation for  
3 this project what emissions might we want to be  
4 concerned with that are not documented in the AFC?

5 A As I stated, the modeling covered a wide  
6 range of load conditions, and under no load  
7 condition were the impacts predicted to be above  
8 the significance levels.

9 What's presented in the AFC are the  
10 maximum predicted impacts.

11 A At all load levels?

12 Q At all load levels that we analyzed,  
13 yes.

14 Q What load levels did you analyze?

15 A The load levels that were analyzed  
16 ranged between 50 and 100 percent load.

17 Q If they were less than 50 did you  
18 analyze that?

19 A We did not analyze that. Based on  
20 information from the project engineer that was not  
21 a reasonable scenario.

22 MS. DUNCAN: That answers my questions,  
23 thank you.

24 HEARING OFFICER GEFTER: Thank you. Mr.  
25 Claycomb, do you have questions?

1                   MR. CLAYCOMB: No questions on this  
2                   subject.

3                   HEARING OFFICER GEFTER: Mr. Carroll, do  
4                   you have redirect of your witness?

5                   MR. CARROLL: No, we don't.

6                   HEARING OFFICER GEFTER: Do you want to  
7                   move those exhibits?

8                   MR. CARROLL: Yes, at this time we would  
9                   like to move exhibit 2, 3, 11, 21, 40, 58, 61 and  
10                  that portion of exhibit 77 that consists of Mr.  
11                  Fontana's prepared testimony.

12                  HEARING OFFICER GEFTER: 77 will be  
13                  moved in its entirety at the conclusion of all the  
14                  hearings.

15                  Is there any objection to the admission  
16                  into the record of the documents that Mr. Carroll  
17                  identified?

18                  Hearing no objection, those documents  
19                  are now received into the record. Thank you.

20                  Does the applicant have an additional  
21                  witness on air quality?

22                  MR. CARROLL: We do not.

23                  HEARING OFFICER GEFTER: Thank you, Mr.  
24                  Fontana.

25                  MR. FONTANA: Thank you.

1 HEARING OFFICER GEFTER: Staff.

2 MR. OGATA: Staff calls Matthew Layton.

3 He needs to be sworn.

4 Whereupon,

5 MATTHEW LAYTON

6 was called as a witness herein and after first

7 being duly sworn, was examined and testified as

8 follows:

9 DIRECT EXAMINATION

10 BY MR. OGATA:

11 MR. LAYTON: Good morning. My name is

12 Matthew Layton. I'm with the California Energy

13 Commission. I work in the air quality unit of the

14 Environmental Office.

15 I prepared the final staff assessment

16 for the Otay Mesa project. A quick summary of the

17 FSA that I prepared:

18 The project is a 500 megawatt project

19 located in San Diego. The project will operate

20 over a range of loads. The applicant did look at

21 the range of loads and modeled those. The models,

22 in my mind, are very conservative, and did arrive

23 at a reasonable estimation of the impacts of the

24 project over those load ranges, and for those

25 emission rates.

1           They also did analyze the PM10 emissions  
2       from the project using an AIROMOD which is a new  
3       modeling protocol, or a new model actually, trying  
4       to get the project impacts below the significance  
5       level.

6           When they first modeled it the project  
7       impacts were above the significance level. They  
8       moved the two stacks together and raised them,  
9       which will decrease the impacts. And also ran the  
10      AIROMOD which is, we hope, a better model, to come  
11      up with more refined modeling for the project.

12           The PM10 impacts for the project were  
13      below the significance level, and therefore  
14      satisfy the District's rules and regs.

15           However, the project, in satisfying the  
16      District's rules and regs, was only required to  
17      provide NOx offsets. The applicant went to a  
18      great effort to come up with NOx offsets in the  
19      area.

20           They are retrofitting some marine  
21      vessels in the harbor. They are replacing some  
22      trash trucks in the area with natural gas trash  
23      trucks. These are providing NOx offsets which the  
24      EPA and CARB and the District have all worked  
25      together to agree that they do provide NOx



1 offsets. The applicant is providing these to  
2 satisfy the District requirements.

3 We also looked at the PM10 impacts from  
4 the project. The project emits SOx, VOCs,  
5 volatile organic compounds, and PM10, all of which  
6 I guess excuse me, PM10 and other pollutants are  
7 PM10 precursors do contribute to an existing  
8 violation of the state PM10 standard for 24 hour.

9 And we wanted to pursue additional mitigation  
10 to address those PM10 impacts.

11 The area is very limited for offsets.  
12 We worked with the applicant to look at other  
13 alternatives rather than just buying offsets in  
14 the market.

15 We also hope to get PM2.5 offsets rather  
16 than PM10 offsets, because the pollution from the  
17 project, the majority of it is PM2.5.

18 What we have finally arrived at, and the  
19 applicant and the staff have come to an agreement  
20 today, is the mitigation fee. This mitigation fee  
21 will be provided to the District.

22 We would prefer that the money go to the  
23 lower emission school bus program, but we have  
24 left the condition somewhat open to allow the  
25 money to also go to the Carl Moyer Program, or

1 perhaps another program which would look at  
2 reductions of PM10 and PM10 precursors.

3 We believe that the lower emission  
4 school bus program or the Carl Moyer Program  
5 provide emission reductions in the neighborhoods  
6 at the receptor level, as opposed to perhaps in a  
7 remote area of the County where perhaps a dirt  
8 road would be paved or something. We believe that  
9 provides mitigation to the extent feasible.

10 On a ton-for-ton basis, the PM10  
11 reductions from the lower emissions school bus  
12 program will not be equivalent to the PM10  
13 emissions from the project. But we believe it  
14 does provide real reductions of PM10 and provides  
15 health benefits and mitigates the project to the  
16 extent feasible.

17 I guess we have agreed on language today  
18 for condition 75 that differs slightly from what  
19 was in the FSA. And I guess we will enter that  
20 into the record.

21 HEARING OFFICER GEFTER: Do you have a  
22 copy?

23 MR. OGATA: Ms. Gefter, we are drafting  
24 that as we speak, and we will provide final  
25 language once the parties have had a chance to

1 look at it.

2 BY MR. OGATA:

3 Q Mr. Layton, your testimony is contained  
4 in staff's final staff assessment part two, which  
5 is marked as exhibit 65, is that correct?

6 A That's correct.

7 Q And you were the author of that?

8 A That's correct.

9 Q You also have authored, marked as  
10 exhibit 88, staff's additional air quality  
11 testimony which was response to public and agency  
12 comments, and you're the author of that, as well?

13 A That's correct.

14 MR. OGATA: We have no further questions  
15 at this time. He is available for cross-  
16 examination.

17 PRESIDING MEMBER LAURIE: Ms. Gefter, I  
18 have a question before we get to cross.

19 Mr. Layton, summarize for me the Air  
20 District's position on PM10.

21 MR. LAYTON: My understanding of their  
22 position, the basin is nonattainment for the state  
23 PM10 standards. It is attainment for the federal  
24 PM10 standards.

25 The basin has pretty much been leveled

1 with respect to the number of violations per year  
2 over the last 10 or 15 years. The impacts have  
3 not gone up or down, and the inventories have  
4 remained relatively flat, as well.

5 I think that's a credit to the District  
6 because there has been growth in the area, and  
7 they've managed to keep the PM inventory  
8 relatively constant.

9 However, there are continued violations  
10 of that state standard and we look at that as a  
11 significant impact.

12 The District, however, is not  
13 necessarily required to achieve the state PM10  
14 standard. The legislation is out there that  
15 identified the standard, however did not provide a  
16 date certain for attainment of that standard.

17 PRESIDING MEMBER LAURIE: Is the Air  
18 District the governmental agency mandated to  
19 enforce the state's air rules and regulations?

20 MR. LAYTON: Yes.

21 PRESIDING MEMBER LAURIE: And is it this  
22 position in this case that given the offsets,  
23 given the credits obtained on all emissions that  
24 the emissions are satisfactorily mitigated,  
25 including PM10?

1                   MR. LAYTON: I would say that's not --  
2                   no. The project has certain emission levels above  
3                   which they are, in their new source review rule,  
4                   are required to require offsets, below which they  
5                   are not required to require offsets.

6                   This project did not trigger offset  
7                   requirements for PM10 per the District rules,  
8                   which is the new source review rule.

9                   But that new source review rule is  
10                  designed for attainment of the federal standards.

11                  PRESIDING MEMBER LAURIE: Well, I guess  
12                  what I'm getting at is does the state agency  
13                  mandated to enforce air emission rules asking for  
14                  additional mitigation for PM10 emissions?

15                  MR. LAYTON: I'm sorry, I didn't  
16                  understand your question.

17                  PRESIDING MEMBER LAURIE: Okay, well,  
18                  let me try it again.

19                  MR. LAYTON: Okay.

20                  PRESIDING MEMBER LAURIE: Staff is  
21                  asking for mitigation over and above what the  
22                  local Air District is asking for.

23                  MR. LAYTON: Correct.

24                  PRESIDING MEMBER LAURIE: And I'm asking  
25                  what the basis of that is. That is, you have the

1 local Air District, which is the state agency,  
2 saying this is the impact that we see, and this is  
3 the mitigation that we feel is necessary.

4 On what basis is staff asking for  
5 additional mitigation?

6 MR. LAYTON: On the basis of the state  
7 standard. The District's new source review rule  
8 is designed to attain and maintain compliance with  
9 the federal ambient air quality standards.

10 In this case we're talking about the  
11 state ambient air quality standard.

12 HEARING OFFICER GEFTER: Are the state  
13 ambient air quality standards more stringent than  
14 the federal?

15 MR. LAYTON: Significantly.

16 PRESIDING MEMBER LAURIE: Okay. And  
17 staff considers it their responsibility to enforce  
18 the state standards?

19 MR. LAYTON: We consider the project's  
20 contribution to an existing violation of the state  
21 standard to be significant, yes.

22 PRESIDING MEMBER LAURIE: Okay.

23 HEARING OFFICER GEFTER: With respect to  
24 the condition 75, does staff feel comfortable  
25 describing the parameters of the changes to the

1 Committee at this point?

2 MR. LAYTON: Condition 75 was a  
3 requirement that the applicant, Otay Mesa  
4 Generating Company, surrender \$1.7 million to the  
5 Air District to be used in one of these programs,  
6 the lower emission school bus program or the Carl  
7 Moyer Program, or another program that will reduce  
8 PM10 and PM10 precursors in the air basin.

9 We have changed that to come to a number  
10 of \$1.2 million. We've also changed when the  
11 money will be surrendered. 600,000 will be  
12 surrendered upon delivery of the first combustion  
13 turbine to the site. And then the second 600,000,  
14 second and last payment of 600,000 will be  
15 surrendered six months after delivery of the  
16 combustion turbine.

17 We've also placed in there, which was  
18 not in the original FSA, but we have added some  
19 language trying to provide a preference to school  
20 districts in the area. There's a Sweetwater High  
21 School District, and then several elementary  
22 school districts, the San Ysidro, the South Bay,  
23 the Chula Vista, which are all close to the  
24 project. Therefore those children might be most  
25 affected by the project emissions, and also by the

1 school buses.

2 HEARING OFFICER GEFTER: Does this  
3 proposal replace the applicant's proposal to pave  
4 roads?

5 MR. LAYTON: Yes.

6 HEARING OFFICER GEFTER: So the road  
7 paving is no longer on the table?

8 MR. LAYTON: No.

9 HEARING OFFICER GEFTER: Staff, do you  
10 have any further questions of your witness?

11 MR. OGATA: No, not at all. I can move  
12 his testimony, exhibit 88, into the record at this  
13 time. Staff's FSA part two will be moved in after  
14 we've had testimony on the other two areas.

15 HEARING OFFICER GEFTER: All right, I'm  
16 going to ask the parties if they have cross-  
17 examination before we move the exhibit.

18 Does the applicant have cross-  
19 examination of the witness?

20 MR. CARROLL: No. We just wanted to  
21 clarify something. I believe that the question  
22 that was asked a moment ago was, so the road  
23 paving proposal is no longer on the table, and the  
24 answer to that was no. Which was a negative to a  
25 negative.



1           I just want to clarify, the road paving  
2       proposal is not currently on the table, except to  
3       the extent that it serves as a surrogate for the  
4       determination of the fee. So we are not planning  
5       to do road paving at this point.

6           HEARING OFFICER GEFTER: Do you have any  
7       cross of the witness aside from that comment?

8           MR. CARROLL: No, we do not. Thank you.

9           HEARING OFFICER GEFTER: Cabrillo Power,  
10      do you have cross-examination of the witness?

11          MR. GOLDMAN: Yes, we do.

12                   CROSS-EXAMINATION

13      BY MR. GOLDMAN:

14          Q     Mr. Layton, I have several questions to  
15      ask of you regarding the FSA part two, the air  
16      quality section, which you authored. It's been  
17      identified as exhibit 65. It might be helpful if  
18      you have a copy in front of you, and specifically  
19      page 17 of the air quality section.

20                  At the very bottom of the page there's a  
21      statement, quote, "recent concerns about  
22      electricity and natural gas supplies in the San  
23      Diego area have raised the likelihood of either  
24      the Encina or South Bay power plants switching to  
25      fuel oil for limited intervals."

1                   And then there is a discussion that goes  
2                   on for another couple of sentences.

3                   MR. CARROLL: I'm sorry, what page of  
4                   the --

5                   MR. GOLDMAN: 17.

6                   MR. CARROLL: Thank you.

7                   BY MR. GOLDMAN:

8                   Q     What is the basis of the recent concerns  
9                   that you report in this section?

10                  A     I think that's based on the testimony of  
11                  Bill Wood.

12                  Q     And where is that reflected? Is that  
13                  exhibit appendix B or appendix A that you're  
14                  referring to?

15                  A     I believe Mr. Wood's testimony is  
16                  appendix A.

17                  Q     Okay. In connection with this  
18                  statement, did the staff do any quantitative  
19                  analysis of the likelihood of either Encina or  
20                  South Bay switching to fuel oil?

21                  MR. OGATA: Excuse me, Mr. Goldman, when  
22                  you say staff, are you asking if Bill Wood or Mr.  
23                  Layton specifically did that analysis?

24                  MR. GOLDMAN: Anyone on staff.

25                  MR. OGATA: Okay.

1                   MR. LAYTON: I did not do that analysis.

2           BY MR. GOLDMAN:

3           Q     Okay, do you know if anyone on staff  
4     did?

5           A     I think you've had to ask Mr. Wood how  
6     he arrived at this conclusions.

7           Q     Okay. Well, the question, if I  
8     understand your answer correctly, you're basically  
9     saying that this comment basically reflects your  
10    understanding of Mr. Wood's analysis in appendix  
11    A, correct?

12          A     Correct.

13          Q     All right. So am I correct in assuming  
14    that if I were to ask -- if any quantitative  
15    analysis was done regarding what might be the  
16    limited intervals that are referenced here in  
17    terms of the likelihood of either Encina or South  
18    Bay power plants switching to fuel oil, you would  
19    direct me to Mr. Wood, is that correct?

20          A     That's correct.

21          Q     In connection with the air quality  
22    analysis did the curtailment of natural gas supply  
23    switch last week during these evidentiary hearings  
24    causing Encina and South Bay to burn fuel oil  
25    affect these concerns reflected here as to

1 potential air impacts of increased fuel burning?

2 A I don't testify to air impacts, I  
3 testify to the air emissions will change if fuel  
4 oil is used.

5 Q In terms, though, of any change, in  
6 terms of an increase, does your analysis include  
7 any mitigation measures?

8 A No.

9 Q And why is that?

10 A Because I did not do any impact analysis  
11 to determine if there are any impacts. All I was  
12 suggesting is that if fuel oil is used there is a  
13 likelihood that PM10 emissions and PM10 precursor  
14 emissions will increase.

15 As I had stated to Commissioner Laurie,  
16 the area is nonattainment for PM10, has been  
17 relatively flat with respect to the inventory and  
18 the number of violations of the state standard.

19 The additional use of fuel oil perhaps  
20 could be a negative trend, but I don't know the  
21 significance, because I don't know the duration or  
22 the frequency, or the season for which these fuel  
23 oil burns will occur.

24 Q I think you indicated three factors,  
25 duration, frequency and what was the last one?

1           A     Season.

2           Q     And season. Do you know -- well, why  
3     didn't you do any analysis of those three factors?

4           A     From the air quality perspective they're  
5     not part of the project.

6           Q     Is it your understanding that the impact  
7     of Otay Mesa's operations utilizing natural gas in  
8     connection with the possibility of increased  
9     episodes of curtailment and fuel burning at  
10    existing plants does not have a significant impact  
11    on air quality?

12           MR. CARROLL: I'm going to object to  
13    this line of questioning. These are really gas  
14    reliability questions not air quality questions.  
15    And we've had extensive testimony from staff  
16    experts on gas reliability, and --

17           MR. GOLDMAN: The question --

18           MR. CARROLL: -- this is not a gas  
19    reliability witness.

20           MR. GOLDMAN: I agree that this is not a  
21    gas reliability witness, and this is not a gas  
22    reliability question. I'm asking him about air  
23    impacts that are direct results of clearly what is  
24    the underlying predicate, which is the undisputed  
25    issue about potential shortages of natural gas.

1                   We're not talking about reliability  
2                   right now at all. We're talking about the air  
3                   impacts of what's already been discussed, which is  
4                   the potential for unreliable supply of natural  
5                   gas.

6                   HEARING OFFICER GEFTER: Mr. Carroll's  
7                   objection is overruled. The witness may answer  
8                   the question.

9                   MR. LAYTON: I did not do modeling of  
10                  Encina or South Bay stacks with either natural gas  
11                  or fuel oil. So how those impacts might change  
12                  for those particular projects I don't know.

13                  The effect, again what I was trying to  
14                  bring forward was this area is nonattainment for  
15                  PM10, and currently has been very flat for PM10  
16                  inventory.

17                  If fuel oil use does increase that could  
18                  affect the background of PM10 levels. I don't  
19                  know how much it could or would affect the  
20                  background levels. Again, it depends on the  
21                  frequency, the duration and the season in which  
22                  these fuel oil burns occur.

23                  Currently those sources are permitted,  
24                  and they are permitted to burn fuel oil. So I  
25                  think obviously you could ask the District what

1 the ramifications of fuel oil use in a permitted  
2 source is.

3 BY MR. GOLDMAN:

4 Q Is it your understanding that area of  
5 analysis is the sole responsibility of the Air  
6 District?

7 A I'm not sure what you mean by your  
8 question.

9 Q Well, if I understood you correctly you  
10 indicated that you did not analyze the duration,  
11 frequency or season of fuel oil burning as a  
12 possible consequence of the operation of Otay  
13 Mesa's impact on natural gas supply. And  
14 indicated to me that perhaps I should inquire of  
15 the Air District in terms of that type of  
16 analysis. Did I understand you correctly?

17 A That's correct.

18 Q Okay, did you direct me to the Air  
19 District because it's your understanding that the  
20 Air District has sole responsibility for analyzing  
21 those factors?

22 A They are the permitting agency for  
23 Encina and South Bay. The Energy Commission is  
24 not.

25 Q The Energy Commission is the permitting

1 authority for Otay Mesa, correct?

2 A Correct.

3 Q And part and parcel of that permitting  
4 process includes analysis of impacts on regional  
5 air quality caused by Otay Mesa, isn't that  
6 correct?

7 A That's correct.

8 Q And is it your position that the result  
9 of Otay Mesa's possibly increasing the likelihood  
10 of natural gas curtailments and thereby negatively  
11 impacting air quality is not something that the  
12 staff should consider in its air quality analysis  
13 for Otay Mesa?

14 A I think you're incorrect. We did  
15 consider in looking at the ambient levels. In  
16 past years fuel oil has been used at all nine  
17 units. Therefore, the precursor emissions of VOC  
18 and SOx and particular matter are already part of  
19 the background. Therefore we did consider them.

20 Now, how much they will change I don't  
21 know. And I haven't heard any good numbers on how  
22 much they will change. Therefore, it's very  
23 difficult to do analysis.

24 Q Well, isn't the change from historical  
25 patterns, which by definition do not include the



1 operation of Otay Mesa, part and parcel of the air  
2 analysis that should have been undertaken?

3 A I don't believe so.

4 Q And why is that?

5 A If you were to try to model the change I  
6 think you would find that the stack parameters --  
7 excuse me, the impacts from the stacks at Encina  
8 or South Bay would not overlap with Otay,  
9 therefore it would be very difficult in modeling  
10 to show how the change would occur.

11 But on a regional level, which  
12 particulate matter is a regional pollutant,  
13 secondary pollutants form, there might be some  
14 impact.

15 But again, I think it would be very  
16 difficult to come to a specific number as to how  
17 the ambient levels of PM10 would have changed with  
18 the use of fuel oil, and whether or not they're  
19 not already considered.

20 Q In terms though of modeling was there  
21 any consideration given to modeling that would  
22 provide for a range of potential impact of  
23 increased fuel oil burning caused by the operation  
24 of Otay Mesa and its use of natural gas  
25 exclusively, as opposed to a specific number which

1 I certainly understand could be difficult to --

2 A We did not model.

3 Q Okay.

4 A You said if you model. I said I did not  
5 model.

6 Q Right, but have you ever engaged in  
7 modeling that did provide you with a range of  
8 potential impacts?

9 MR. CARROLL: Ever? In the context of  
10 this project? Or --

11 MR. GOLDMAN: No.

12 BY MR. GOLDMAN:

13 Q In the context of your position on the  
14 staff, in terms of air quality analysis. What I'm  
15 getting at is I understand that it might be  
16 difficult to get to a precise number, but it's my  
17 understanding that a precise number is not called  
18 for in terms of air emissions and air quality  
19 analysis, but rather possibly just a range of data  
20 in order to do further analysis and make  
21 projection.

22 So, my question was are you saying that  
23 it would not be do-able to undertake modeling that  
24 would provide you with a range of impacts caused  
25 by increased oil burning caused by the operation

1 of Otay Mesa?

2 A I believe you could undertake the  
3 modeling. However, I think you would find that  
4 the impacts from the fuel oil would be different  
5 than the impacts from Otay Mesa.

6 Q How do you make that distinction?

7 A If you were to model Otay Mesa, which we  
8 did, and determine the maximum impacts, and then a  
9 range of impacts from those maximums, you could  
10 then model South Bay or Encina and from those  
11 stack you could also get maximum impacts, and then  
12 a range of impacts at different locations.

13 What I think you would see is that you  
14 would not see the impacts from Encina and South  
15 Bay contributing to any impacts at Otay impacts.  
16 The stacks are so far apart it would be hard to  
17 provide a nexus from modeling data.

18 Now, on a regional level, again there  
19 may be some contribution of South Bay and Encina  
20 to the greater PM10, the ambient levels of PM10.  
21 But we don't have a model that looks at that.

22 Q If I understand you correctly, though, a  
23 separate model to analyze the impacts from  
24 increased emissions from Encina and South Bay  
25 caused by the curtailment of natural gas, caused

1 by the operation of Otay Mesa, could be done. It  
2 would just be a separate model from the air  
3 emissions modeling analysis from the Otay Mesa  
4 stacks, correct?

5 HEARING OFFICER GEFTER: Excuse me. Mr.  
6 Goldman, it sounds to me that built into your  
7 question you're making a lot of assumptions. And  
8 it would be best if you broke it down. Because  
9 you're making the assumption that Otay Mesa was  
10 causing the other two projects to burn fuel oil,  
11 and that's not a finding that anyone has made at  
12 this point.

13 So, break down your question.

14 MR. GOLDMAN: The point is well taken in  
15 that there is an assumption and I think there is  
16 evidence to suggest that the operation of Otay  
17 Mesa, without a corresponding increase in natural  
18 gas supply, would have a likely effect of  
19 increasing the curtailment of natural gas supplies  
20 to existing plants.

21 And having said that, my understanding  
22 is that Mr. Layton is indicating that it would be  
23 too complex to have one model that would  
24 incorporate both analysis of the emissions from  
25 the Otay Mesa stack --

1 MR. LAYTON: That's not what I said.

2 MR. GOLDMAN: Okay, then I apologize for  
3 the confusion. Could you let me know what you did  
4 say?

5 MR. LAYTON: In using the traditional  
6 ISC model or the AIROMOD models, which look at a  
7 point source, I would think you would not find  
8 that there's the overlap between the impacts from  
9 those two point sources.

10 But, again, on a regional level you  
11 might imagine that increases of PM10 and PM10  
12 precursors could affect the background. It may be  
13 a very small effect, but again, we've already  
14 looked at that in the sense that we've looked at  
15 the ambient levels for PM10 over the last -- on  
16 the same page, we refer to page 17, I go back five  
17 years. And the PM10 numbers do jump around, but  
18 in those five years there's been fuel oil use at  
19 those sites.

20 BY MR. GOLDMAN:

21 Q Is it your understanding that the  
22 historical data in terms of natural gas  
23 curtailment and fuel oil burning is adequate to  
24 model for future planning purposes?

25 The reason I ask is my understanding is

1       until last week there'd only been, you know, a  
2       couple of hours of curtailment over the last  
3       several years.

4           A       That's not my area of expertise. Your  
5       question was about adequacy of curtailment and  
6       things like that. I don't -- that's not my area  
7       of expertise. I think Mr. Wood can answer that  
8       question.

9           Q       Well, let me try to make it more clear.  
10      I'm asking about the air emissions consequences of  
11      natural gas curtailment which leads to increased  
12      fuel oil burning which I know is addressed in the  
13      air quality section.

14           MR. CARROLL: I'm going to object to  
15      this line of questioning and echo comments made by  
16      Ms. Geffer a moment ago. All of these questions  
17      are assuming facts that are not in evidence, and  
18      therefore are lacking in foundation.

19           Every single question that has been  
20      asked is premised on a set of assumptions about  
21      Otay Mesa Generating causing additional fuel  
22      burns.

23           MR. GOLDMAN: Well, yes, but there has  
24      been evidence adduced into the record on that. I  
25      know that that's disputed by the applicant, but it

1 is there.

2 Let me move on in the hopes of making it  
3 more clear. I'll focus more clearly on the air  
4 quality section of the FSA to try to expedite  
5 this.

6 BY MR. GOLDMAN:

7 Q If you'd turn to page 18, under the  
8 section future air quality. And I gather, Mr.  
9 Layton, by the title of the section this is  
10 looking prospectively, correct?

11 A Correct.

12 Q And presumably the prospective analysis  
13 is based on analysis of historical patterns and  
14 also projected alterations that would be caused by  
15 the operation of Otay Mesa, correct?

16 A Correct.

17 Q In the second paragraph of the future  
18 air quality discussion, second sentence says:  
19 While staff expects these trends to continue, and  
20 it's progress in reducing ozone and PM10  
21 violations, staff is concerned about the  
22 unforeseen air emissions implications in the power  
23 generation sector due to potential natural gas  
24 curtailments and new plants.

25 And then there is a reference to such

1 curtailments could require the use of residual  
2 fuel oil, et cetera.

3 What do you mean, or did the staff mean  
4 by unforeseen air emissions implications?

5 A What I was trying to do was lay out that  
6 there are concerns about PM10 in the region, and  
7 therefore Otay Mesa's contribution to those PM10  
8 levels in the region were of concern to us and  
9 significant.

10 What we have done in response to that is  
11 mitigate to the extent feasible the emission of  
12 Otay Mesa.

13 Q Just above the future air quality  
14 section straddling pages 17 and 18 there's a  
15 reference to the switch from gas to oil at Encina  
16 or South Bay. And the statement is the switch  
17 would be temporary to ease immediate shortages in  
18 either electricity or natural gas in the region.  
19 The increased sulfur emissions would not cause the  
20 region to exceed the SO2 standards, but would  
21 contribute to PM10 levels in the region.

22 Do I understand correctly that that  
23 indicates that the increased duration and  
24 frequency of oil burning at Encina or South Bay  
25 could, in fact, contribute to PM10 levels,



1 increased PM10 levels in the region?

2 A That's what I've testified to before,  
3 yes.

4 Q Okay. And has that factor, that is the  
5 impact of Otay Mesa's operation on South Bay and  
6 Encina, in terms of increasing PM10 levels,  
7 something that has been analyzed quantitatively?

8 A No. As I said before, what I was trying  
9 to do was suggest that there is a need to look at  
10 PM10 emissions from Otay Mesa because the area is  
11 nonattainment for PM10 and possibly will continue  
12 to be a nonattainment for PM10.

13 The reasons it will continue to be a  
14 nonattainment for PM10 is because it continues to  
15 grow, more industries come in, more people come  
16 in, the vehicle miles continue to rise.

17 Now, the District has done a good job  
18 because they have kept the PM10 inventory  
19 relatively constant despite those pressures.

20 What I was trying to suggest here is  
21 that there are additional pressures that the  
22 District should consider, and that we should  
23 consider when looking at the ambient levels of  
24 PM10.

25 And this is just one of them. But, I

1 did not suggest that you could necessarily tie  
2 these emissions from Encina and South Bay to the  
3 emissions at Otay. I have not said that.

4 Q Do you dispute that there is a direct  
5 cause and effect relationship between Otay Mesa's  
6 operation and if that operation, as has been  
7 suggested by at least some witnesses here,  
8 increases the likelihood of natural gas  
9 curtailment and therefore the increased frequency  
10 of fuel oil burning, that that would, in fact,  
11 contribute to the PM10 levels in the region  
12 independent of whether or not you happen to tie  
13 that directly to air emissions out of the Otay  
14 Mesa stacks?

15 MR. OGATA: I'm going to object to that  
16 question. I'll let him respond to the extent that  
17 he knows the answer to that, but I believe that  
18 that's -- again, you're making a lot of  
19 assumptions about things that I think are beyond  
20 his expertise.

21 So, as I say, I'll let him answer to the  
22 extent that he knows, but I want it clear that  
23 you're asking something that I think he's not  
24 really capable of answering.

25 MR. GOLDMAN: Well, for the record, he's

1 the designated air quality staff member, and this  
2 is an air quality question.

3 MR. LAYTON: Actually your question  
4 started out whether or not I thought curtailments  
5 would increase.

6 MR. GOLDMAN: No, no, --

7 MR. LAYTON: Well, that's what I heard  
8 out of your question.

9 MR. GOLDMAN: Well, let me make it very  
10 clear, no, no, --

11 MR. LAYTON: Then you started getting to  
12 PM10, so if you can just repeat the PM10 portion  
13 of the question I'll try to answer that.

14 MR. GOLDMAN: I'll emphasize PM10  
15 because I don't want to have any unnecessary  
16 confusion on the record.

17 BY MR. GOLDMAN:

18 Q If I understand page 17 and 18  
19 correctly, it seems to be an acknowledgement,  
20 however indirect, that the operation of Otay Mesa,  
21 in addition to direct impacts from its own stacks,  
22 by having an impact on Encina and South Bay, such  
23 as they burn fuel oil in increased quantities,  
24 that that would also contribute to PM10 levels in  
25 the region, isn't that correct?

1           A     I think what you're trying to suggest is  
2           that I have, in my testimony, suggested that the  
3           operation of Otay will cause that increased fuel  
4           use. And I have never suggested that.

5                     What I've suggested in my testimony is  
6           that I believe, given the testimony of others,  
7           that there is a potential for curtailments of  
8           natural gas in the region, and the use of fuel oil  
9           in Encina and South Bay. That may contribute to  
10          ambient levels of PM10.

11                    I have never suggested that Otay Mesa is  
12          the cause of those curtailments.

13          Q     Well, excepting, as you just pointed  
14          out, the assumptions of others for purposes of air  
15          quality analysis. Assuming that Otay Mesa were,  
16          in fact, the cause of increased fuel oil burning  
17          at Encina and Otay Mesa (sic) that would, in  
18          effect cause an increase in PM10 levels in the  
19          region, in addition to whatever PM10 emissions  
20          occur out of the Otay Mesa stacks, correct?

21                   MR. OGATA: Excuse me, Mr. Goldman. I'm  
22          going to object just with respect to timing here.  
23          You're asking him a question that basically leaves  
24          open-ended the amount of time that that  
25          curtailment may have a impact.

1                   If it's curtailment with respect to a  
2           few seconds, respect to hours, or respect to days,  
3           I think his answer would change.

4                   So, again, I'll let him answer with  
5           respect to just a kind of a qualitative response  
6           which is what his testimony is about. But I can't  
7           let him answer it with respect to any specifics  
8           because I think that's, again, outside the scope  
9           of his testimony, outside the scope of any  
10          evidence that's in the record, and it's not part  
11          of the question.

12                   MR. GOLDMAN: Well, I agree --

13                   PRESIDING MEMBER LAURIE: Let me ask --  
14          Mr. Goldman, let me ask what your intentions are  
15          regarding further questioning. Mr. Layton's  
16          testimony has some general statements regarding  
17          the fact that there could be additional  
18          curtailment, and that's made referenced in the  
19          future air quality section of page 18.

20                   Page 19 talks about a potential worst  
21          case scenario of such curtailments on PM10  
22          emissions.

23                   I thought I heard Mr. Layton testify  
24          that beyond that there has not been more explicit  
25          analysis.

1                   Now what more are you seeking to pursue?

2                   MR. GOLDMAN:   What I'm seeking to  
3                   confirm is what I think is an implicit, but not  
4                   explicit, recognition of the cause and effect  
5                   relationship between increased air emission on a  
6                   regional basis caused by the operation of Otay  
7                   Mesa.

8                   I recognize that there hasn't been, as  
9                   the witness has testified, any quantitative  
10                  analysis or modeling done on that.

11                  But what I'd like to establish for the  
12                  record is that there's a recognition that the  
13                  regional issue exists.   And then I'd like to  
14                  follow up with some questioning about the MERC  
15                  issue, which seems to recognize that you can  
16                  mitigate a point specific problem, or impact, with  
17                  a regional mitigation measure.

18                  The flip side to that, we think, has to  
19                  be that in doing and environmental analysis as  
20                  required by CEQA, to the extent that there are  
21                  direction regional consequences caused by a point  
22                  specific event like the operation of a power  
23                  plant, that that has to be recognized.

24                  And I gather from Mr. Layton that he,  
25                  for whatever reason, is not necessarily

1 comfortable recognizing or acknowledging that  
2 there is a regional impact in terms of air  
3 emissions caused by the operation of Otay Mesa.

4 PRESIDING MEMBER LAURIE: Okay, but that  
5 question has been asked and answered, I believe,  
6 two or three times.

7 MR. GOLDMAN: Well, --

8 PRESIDING MEMBER LAURIE: But if you  
9 want to ask it one more time in some different  
10 fashion, do so, and maybe you'll get a different  
11 answer.

12 MR. GOLDMAN: I'll try one last time and  
13 then I will move on.

14 PRESIDING MEMBER LAURIE: Okay.

15 BY MR. GOLDMAN:

16 Q Mr. Layton, do you agree that increased  
17 fuel burning at Encina and/or South Bay that would  
18 increase emissions of some of the substances that  
19 are listed here at the beginning of your analysis,  
20 as criteria air pollutants, would have a regional  
21 impact on air quality?

22 A No, I wouldn't agree with that.

23 Q Okay. Why is that?

24 A Depends on the amount; depends on the  
25 duration of those emissions; depends on the

1 seasonality of those emissions.

2 On a certain day, yes, you are going  
3 at -- you are correct, fuel oil has higher  
4 emissions of PM10 and other PM10 precursors.  
5 However, that may not have negative air quality  
6 effect. It depends on the season, duration  
7 and --

8 Q Frequency?

9 A -- frequency. Thank you.

10 Q Okay, yeah. So, clearly the more  
11 frequent, the longer the duration, and it's both  
12 winter and summer, meaning more in terms of these  
13 variables, obviously there'd be a greater  
14 likelihood of a significant environmental impact,  
15 correct?

16 A You really don't know that. It depends.  
17 The --

18 Q Well, if I may, --

19 A -- you know, you could have a scenario  
20 where the fuel oil burns only occur on days where  
21 there's not a PM10 problem, and therefore there's  
22 no appreciable difference.

23 Q From what you know of the curtailment  
24 and increased fuel burning of last week, do you  
25 have any understanding as to whether or not that



1       might be able to constitute a significant air  
2       impact?

3               MR. CARROLL:  I'm going to object to  
4       this question.  As far as we know Mr. Layton  
5       doesn't know anything about --

6               MR. GOLDMAN:  Well, he can answer --

7               MR. CARROLL:  -- until that occurred  
8       last week, so there's no foundation for the  
9       question.

10              MR. GOLDMAN:  I asked him, do you know.

11              MR. LAYTON:  I think Mr. Carroll's  
12       correct, --

13       BY MR. GOLDMAN:

14              Q     Is the answer no, you do not know?

15              A     No, I do not know --

16              Q     Okay.

17              A     -- anything about the fuel oil burn last  
18       week other than it did occur.  I do not know the  
19       timing or the duration.

20              Q     Okay.

21              A     Or the quantity of fuel oil, the type of  
22       fuel oil, the emission parameters during the burn,  
23       the loading on the boiler during that burn.  These  
24       are all questions that one would want to look at  
25       if one was trying to analyze the effects of the

1 Encina or South Bay stacks.

2 But again, I don't think there would be  
3 any overlap with the Otay Mesa stack.

4 Q So I gather from what you just said that  
5 one could analyze it if one wanted to, correct?

6 A Correct.

7 Q Okay, but you decided not to do that?

8 A Correct.

9 Q All right. And if I understand you  
10 correctly, you're willing not to do that,  
11 notwithstanding the fact that, as you point out  
12 here, quote: While likely to be short in  
13 duration, residual fuel oil firing can  
14 significantly increase the emission rates of some  
15 criteria air pollutants, isn't that correct?

16 A Correct.

17 Q Let's move on to the next section, and I  
18 think these other ones will go more quickly.

19 The next section, as you know, on page  
20 18 is entitled, air emissions implications of rule  
21 69 and potential natural gas curtailments in San  
22 Diego.

23 Could you tell us generally why this  
24 section is here?

25 A As I've said repeatedly, this was trying

1 to lay out the PM10 levels in the area, the  
2 ambient PM10 for the region.

3 San Diego has made progress because  
4 they've managed to keep their PM10 inventories  
5 fairly constant despite the pressures of increased  
6 vehicle growth and population growth.

7 They also have maintained fairly level  
8 number of impacts per year, or violations, excuse  
9 me, of the state standard.

10 This was just going to the fact that  
11 there is potential for changes in one particular  
12 source. There are numerous other sources in the  
13 basin which could also change, which the district  
14 would want to look at in trying to come up with a  
15 method or a plan to attain the state PM10  
16 standard.

17 Q There are references in this section, as  
18 well, to NOx and sulfur emissions.

19 A Correct.

20 Q And the reason I raise this is because  
21 in your discussion previously you just refer to  
22 PM10. Is it the staff's position that NOx and  
23 sulfur emissions are not something that needs to  
24 be analyzed?

25 A In referring to the regional levels of

1 PM10, one should always look at any precursors.

2 NOx, VOCs and SOx are all precursors to PM10.

3 Q At the beginning of this discussion of  
4 the air emissions implications of rule 69 and  
5 potential natural gas curtailments in San Diego  
6 there's a reference to the San Diego region, from  
7 an electricity and natural gas perspective, can be  
8 considered an island with a limited number of  
9 connections to the greater western state supply  
10 networks.

11 Why is that the introductory commentary  
12 to this discussion?

13 A From what I understand from testimony of  
14 others, the region can experience shortages of  
15 electricity or natural gas, either due to high  
16 demand, low supply or interruptions of supply in  
17 the supply lines.

18 Q And this sentence in this section in the  
19 air quality analysis of the FSA acknowledges, does  
20 it not, that Otay Mesa may have an exacerbating  
21 impact on this preexisting condition, correct?

22 A No, that's not what I said.

23 Q Well, I know that's not what it says,  
24 but doesn't that acknowledge and reflect that is a  
25 potential?

1           A     Again, from what I understand, the issue  
2     of electricity supply and natural gas supply are  
3     separate issues. The limited number of pipelines  
4     and transmission lines, and the limited amount of  
5     in-basin generation, and the amount of imports,  
6     these are all existing things.

7                     And I make no conclusions about whether  
8     Otay will exacerbate that situation or not.  
9     That's out of my area of expertise.

10          Q     But the impact of Otay Mesa and  
11     potential natural gas curtailments and air  
12     emissions implications are part of that, correct?

13                   MR. CARROLL: I'm going to object to Mr.  
14     Goldman's repeated attempts to read into Mr.  
15     Layton's testimony what he wants it to say.

16                   The witness has testified as to what the  
17     statement says. We can all read what the  
18     statement says. If Mr. Goldman wants to read  
19     something else into that, I suggest that's more  
20     appropriate for the brief than it is for  
21     examination of the witness.

22                   HEARING OFFICER GEFTER: Mr. Carroll's  
23     objection is sustained.

24                   MR. GOLDMAN: Well, for the record, I'm  
25     in no position to get Mr. Layton to say anything

1       that he doesn't want to say. The whole purpose of  
2       my questioning is basically for me to have, and  
3       the record to reflect ostensibly what the  
4       underlying assumptions, either explicit or  
5       implicit, are in the analysis. And Mr. Layton is  
6       perfectly capable of taking care of himself in  
7       this regard.

8               But I will ask some additional  
9       questions.

10       BY MR. GOLDMAN:

11           Q     Given the title of this subsection, Mr.  
12       Layton, there is no dispute, is there, that there  
13       are air emissions implications of potential  
14       natural gas curtailments in San Diego, correct?

15           A     Correct, that's what the title says.

16           Q     Okay. And this title is in the context  
17       of the perspective operation of Otay Mesa,  
18       correct?

19           A     No.

20           Q     It is not?

21           A     This section, again, deals with future  
22       air quality. I was trying to lay the groundwork  
23       of despite the efforts of the District to reach  
24       attainment of the state PM10 standard, they have  
25       not.

1                   But they have managed, over time, to  
2           keep PM10 levels relatively constant, and keep the  
3           number of violations relatively low.

4                   However, they have not reached  
5           attainment yet. And therefore they need to  
6           continue to look at various sources of PM10  
7           emissions and their precursors.

8                   That's the only intent of this section  
9           right here.

10           Q     Well, rather than move to strike your  
11           answer as nonresponsive, let me ask a follow-up  
12           question.

13                   The discussion here is contained in the  
14           FSA regarding the Otay Mesa application for  
15           certification, correct?

16           A     Correct.

17           Q     Okay, --

18                   HEARING OFFICER GEFTER: Mr. Goldman,  
19           let's move on. Mr. Layton has already answered  
20           your question, and it seems to me that you're  
21           trying to get him to change his answer by asking  
22           him some other questions.

23                   He gave you the explanation as to why  
24           this section is in here. Unless you have a much  
25           more specific question, let's move on to another

1 topic.

2 MR. GOLDMAN: Okay.

3 BY MR. GOLDMAN:

4 Q On the next page, second to last  
5 paragraph of this section, air emissions  
6 implications and potential natural gas  
7 curtailments in San Diego, there's a reference to,  
8 quote, "the huge increases in NOx, sulfur and PM10  
9 during residual fuel oil fired relative to natural  
10 gas firing may have adverse effects on the air  
11 quality in the region."

12 Do you see that?

13 A Yes, I do.

14 Q There is also at the end of the next  
15 paragraph a discussion about basically a statement  
16 that the exact emissions increases depend on  
17 several factors that you've already alluded to,  
18 and there's a reference at the very end that  
19 increases in PM10 during humid conditions can  
20 increase ambient PM10 levels. Do you see that?

21 A Yes.

22 Q Is that referring to winter time, time  
23 for winter curtailment?

24 A Generally PM10 does follow a seasonal  
25 pattern, but in San Diego that pattern's not as



1 necessarily as clear.

2 Q Well, is it your understanding that San  
3 Diego is more humid in the wintertime or the  
4 summertime?

5 A To be honest I don't really know the  
6 exact weather of San Diego. I lived here for  
7 seven years but I can say that it's very pleasant  
8 in the winter sometimes, also very rainy in the  
9 winter sometimes.

10 Q Okay. Is it sometimes very rainy in the  
11 summertime?

12 A Occasionally you do get some rains, yes.

13 Q Okay.

14 A But again, I'm not a weatherman, so I  
15 would defer to research on that before I state  
16 exactly what the weather is down here at all  
17 times.

18 MR. GOLDMAN: Well, maybe I'll ask Mr.  
19 Weatherwax, --

20 (Laughter.)

21 MR. GOLDMAN: -- as the name implies, if  
22 he knows.

23 HEARING OFFICER GEFTER: How many more  
24 questions do you have, Mr. Goldman?

25 MR. GOLDMAN: We're actually nearing the

1 end. In fact, we're going to make progress by  
2 going up to around page 35. Before I get ahead of  
3 myself, page 34, emissions offsets.

4 BY MR. GOLDMAN:

5 Q If I understand correctly, Mr. Layton,  
6 among the emissions offsets, among several  
7 creative and innovative devices, include MERCs  
8 affecting the San Diego Harbor, is that correct?

9 A That's correct.

10 Q Do you know, by chance, how many miles  
11 the harbor is from the Otay Mesa facility?

12 A I believe I have it, it's about 15, 16  
13 miles I believe.

14 Q Okay. And there's a nice discussion of  
15 the offset, and specifically on page 38 regarding  
16 the staff's PM10 mitigation measures there's a  
17 statement that, quote, "staff investigated  
18 additional emissions reductions in the San Diego  
19 region."

20 What is the relevant geographic unit for  
21 emissions reductions in connection with the Otay  
22 Mesa project?

23 A I'm not sure I understand your question.

24 Q Well, I've seen in here, there's a  
25 reference to the San Diego region, to the San

1       Diego Air Pollution Control District, to the San  
2       Diego Basin, those may be the same geographic  
3       areas of jurisdiction, I don't know.

4               And so I was a little confused in terms  
5       of the geographic range of the mitigation activity  
6       that the staff would consider acceptable in terms  
7       of offsetting the specific, facility specific  
8       impact of Otay Mesa.

9               A     Well, the staff was looking to offset  
10       PM10 impacts.

11              Q     Okay.

12              Q     And PM10 is a regional pollutant.  
13       Therefore we do feel there is a nexus between the  
14       region, say some sources are far away, some  
15       sources are closer.

16              Q     Okay, in this context how do you define  
17       a region?

18              A     San Diego air basin.

19              Q     Okay. And is that consistent with the  
20       jurisdiction of the San Diego Air Pollution  
21       Control District?

22              A     The District, the County and the air  
23       basin --

24              Q     Okay, --

25              A     -- are -- actually I don't know about

1 the air basin being one wholly in the District.

2 Q Was there any concern as to whether or  
3 not the geographic span from the San Diego Harbor  
4 being 15 or 16 miles from the Otay Mesa plant  
5 would render an offset basically irrelevant  
6 because it was too attenuated geographically?

7 A Offsets are looked at on a program  
8 basis. If you -- oftentimes offsets are not  
9 necessarily directly tied to the project's  
10 emissions. But over time, through the continuing  
11 implementation of the new source review emission  
12 reductions occur throughout the basin.

13 Now, for ozone, which the MERCs were  
14 going after NOx, which is a precursor to ozone, it  
15 does form downwind and over time. And therefore  
16 if you look at some of the ambient air quality  
17 data that I show in here about ozone, you will  
18 notice that the ozone is generally higher inland  
19 than at the coast, because the ozone takes time to  
20 develop.

21 Therefore, these NOx offsets upwind of  
22 Otay will provide some benefit.

23 Q Well, in terms, though, what I'm really  
24 trying to get at, the analytical framework for  
25 recognizing that an offset at a place that's

1 geographically removed from the actual facility  
2 would be considered a legitimate environmental  
3 offset for CEQA purposes.

4 MR. CARROLL: I'm sorry, I thought you  
5 were finished.

6 MR. GOLDMAN: I am.

7 MR. CARROLL: I'm going to object to  
8 this line of questioning. I think the question of  
9 what is or is not a legitimate offset is a matter  
10 of what is required by the District rules. I'm  
11 going to suggest that these questions are more  
12 appropriately addressed to the District Staff.

13 HEARING OFFICER GEFTER: Mr. Carroll's  
14 objection is sustained, and I would agree with his  
15 comment.

16 MR. GOLDMAN: And so would I because I  
17 think the whole respect he misunderstood my  
18 questioning, or more likely my question wasn't as  
19 clear as it should have been.

20 I'm not taking issue with the offset  
21 program. What I'm trying to understand is the  
22 range of the staff's willingness to implement  
23 this, what seemingly is a very innovative and  
24 creative program, in terms of their comfort level  
25 of geographic relationship with the facility

1 location.

2 The reason that I'm curious about this  
3 is because if I understand Mr. Layton correctly he  
4 has stated that the staff did not do a CEQA air  
5 emissions analysis of the emissions of Encina and  
6 South Bay because they're, you know, further away  
7 from the Otay Mesa facility.

8 So I just wanted to be able to see if we  
9 could get some greater understanding as to the  
10 range of the staff's concerns in terms of  
11 geographic proximity as it relates to air  
12 emissions and air offsets.

13 HEARING OFFICER GEFTER: Mr. Goldman, it  
14 appears to me that you're confusing several  
15 mitigation measures, because the offset program is  
16 a program that's been adopted by the District, as  
17 we understand it, with input from CARB and USEPA.  
18 And this program has been approved.

19 So it would seem that your questions  
20 with respect to the MERC offset program would be  
21 more appropriate for the Air District.

22 With respect to whether staff conducted  
23 a CEQA analysis of potential fuel burning of the  
24 Encina and South Bay plants is a different  
25 question. Perhaps you can ask that question.

1 MR. GOLDMAN: Okay.

2 BY MR. GOLDMAN:

3 Q Mr. Layton, do I understand you  
4 correctly that the staff did not perform a CEQA  
5 analysis of increased air emissions from the  
6 Encina and South Bay plants because those  
7 emissions occur at locations that are considered  
8 too distant from the Otay Mesa facility?

9 A No. In my judgment you could not show a  
10 contribution from those stacks to any impacts that  
11 are occurring from Otay Mesa.

12 Now, with offsets we're looking to  
13 reduce the emissions. What you're talking about  
14 are impacts from the stacks.

15 And as I said before, I did not analyze  
16 the impacts from Encina and South Bay. Yes, they  
17 are remote. Yes, they are about the same location  
18 as the harbor which the NOx offset reductions come  
19 from.

20 But, again, those offset reductions are  
21 providing emission reductions to the inventory.  
22 And I did not do an impact analysis on the stack,  
23 the South Bay and Encina stacks.

24 Q If I understand you correctly you're  
25 saying that the -- well, do I understand you

1       correctly when I understand that you're  
2       distinguishing the impacts of the increased air  
3       emissions from Encina and South Bay as to  
4       distinguish from the impacts of the emissions of  
5       Otay Mesa?

6               MR. CARROLL: I'm going to object.  
7       There is no foundation for the question. It  
8       assumes that there are increased impacts  
9       associated with additional fuel burning from  
10      Encina and South Bay caused by Otay Mesa.

11              Once again we're back to a series of  
12      questions that are premised on a set of  
13      assumptions that are not in the record.

14              MR. GOLDMAN: Well, the record actually,  
15      I think, does reflect that. Not only the  
16      testimony of Mr. Weatherwax, but I think the  
17      discussion that we've just exhaustively  
18      encountered right here in Mr. Layton's analysis,  
19      the air emissions impacts of natural gas  
20      curtailment.

21              So the foundation is there. I just  
22      wanted to clarify what Mr. Layton just said --

23              MR. LAYTON: I think it's air emission  
24      implications, not impacts.

25              MR. GOLDMAN: Okay.



1 BY MR. GOLDMAN:

2 Q What is the distinction between that?

3 A The emissions will change with fuel oil  
4 firing.

5 Q Okay.

6 A The air quality impacts I did not  
7 quantify. I think it would be very difficult to  
8 quantify.

9 Q Well, that I understand. But, in  
10 addition, I guess I'm confused about the  
11 distinction between contributions to air quality,  
12 that's just a word I wrote down from what you had  
13 just said, so forgive me, you might have to put it  
14 in perspective for me, and actual impacts from  
15 Otay Mesa.

16 I probably misunderstood you, but my  
17 understanding was that you have done an analysis  
18 and a modeling of the air emissions and the  
19 impacts of the emissions from the Otay Mesa stack,  
20 correct?

21 A The applicant did the analysis, yes.

22 Q Yes, and you reviewed it?

23 A Yes.

24 Q And you recognized that there could be  
25 air quality implications from increased fuel oil

1 burning, but that that would derive from emissions  
2 from the Encina and South Bay stacks, as opposed  
3 to the Otay Mesa stacks, correct?

4 A Correct. I've never said that Otay Mesa  
5 causes that increase. I'm not qualified to  
6 suggest that Otay Mesa is going to cause increased  
7 curtailments or increased use of fuel oil. I've  
8 never said that, I can't.

9 Q Okay.

10 HEARING OFFICER GEFTER: Mr. Goldman,  
11 this is about the sixth or seventh time that the  
12 witness has stated that.

13 If you have a question could you ask the  
14 question directly without putting all of your  
15 understandings and implications into the question.  
16 And how many more questions do you have?

17 MR. GOLDMAN: I think I have either none  
18 or just one or two follow-ups.

19 BY MR. GOLDMAN:

20 Q Mr. Layton, if we could turn to page 42,  
21 the conclusions and recommendations. There's a  
22 reference that the Otay Mesa plant would reduce  
23 operational emissions and provide emissions  
24 offsets, reducing any potential NOx impacts to a  
25 level of insignificance.

1 I take it that that --

2 MR. CARROLL: I'm sorry to interrupt,  
3 where --

4 MR. GOLDMAN: Page 42, at the very  
5 bottom.

6 MR. CARROLL: Okay, thank you.

7 BY MR. GOLDMAN:

8 Q I take it that that conclusion does not  
9 incorporate any analysis of potential NOx impacts  
10 at South Bay or Encina, correct?

11 MR. CARROLL: Object. Asked and  
12 answered.

13 MR. GOLDMAN: Well, --

14 HEARING OFFICER GEFTER: It's sustained.  
15 Also, again, Mr. Goldman, you're putting your  
16 understanding into the question. If you can ask a  
17 direct question of the witness it would be more  
18 helpful to us.

19 MR. GOLDMAN: All right.

20 BY MR. GOLDMAN:

21 Q Is it the staff's intention to reduce  
22 any potential NOx impacts of Otay Mesa to a level  
23 of insignificance?

24 A We believe the NOx offset package  
25 reduces the NOx impacts to a level of

1       insignificance.

2           Q     And is that your goal?

3           A     Yes.

4           Q     Is it also your goal to reduce any  
5       potential of PM10 impacts to a level of  
6       insignificance to the extent feasible?

7           MR. CARROLL: I'm going to object to the  
8       relevancy of the staff's goals here. I don't  
9       think that the staff's goals are what dictate what  
10      happens and what does not happen.

11          PRESIDING MEMBER LAURIE: Mr. Carroll,  
12      give him this opportunity to wrap it up.

13          MR. GOLDMAN: Thank you.

14          (Laughter.)

15          MR. CARROLL: Trying to hasten that.

16          MR. LAYTON: We would like to mitigate  
17      the PM10 impacts from this project to the extent  
18      feasible.

19      BY MR. GOLDMAN:

20          Q     And that's on a regional basis, correct?

21          A     We hope on a regional basis we can  
22      reduce the impacts of the PM10 and PM10  
23      precursors.

24          Q     Final question. Did the staff consider  
25      the impact on regional air quality of the

1 operation of Otay Mesa under reasonable worst case  
2 scenario?

3 A For the project, yes.

4 MR. GOLDMAN: Thank you.

5 HEARING OFFICER GEFTER: Does Duke have  
6 questions of the witness?

7 MS. LUCKHARDT: Just a couple.

8 (Laughter.)

9 MS. LUCKHARDT: And I do mean that.

10 CROSS-EXAMINATION

11 BY MS. LUCKHARDT:

12 Q Mr. Layton, I believe that you testified  
13 in response to Commissioner Laurie's questions  
14 earlier that an increase in emissions from Otay  
15 Mesa increase in PM10 emissions would -- let me  
16 start this again.

17 He asked you for a justification,  
18 Commissioner Laurie asked you for a justification  
19 for your additional mitigation, and is it correct  
20 to say that since the state standard was in  
21 violation that any addition in PM10 would create a  
22 significant impact?

23 MR. CARROLL: I would object, that calls  
24 for a legal conclusion.

25 MS. LUCKHARDT: I believe he stated that

1       it was a significant impact in his determination  
2       in response to Commissioner Laurie, so I don't  
3       think that this is beyond that question.

4               HEARING OFFICER GEFTER:   Are you asking  
5       him to repeat his testimony?

6               MS. LUCKHARDT:   Sure.

7               HEARING OFFICER GEFTER:   Well, we have  
8       it in the record.   Why don't you move on.   Restate  
9       the question.

10              MS. LUCKHARDT:   Okay, that's fine.

11       BY MS. LUCKHARDT:

12              Q       I assume you recall your response?

13              A       Yes.

14              Q       Okay, great.   And, Mr. Layton, you have  
15       recommended in this case, as well as other cases,  
16       mitigation based on construction emissions, have  
17       you not?

18              A       We've recommended that the construction  
19       emissions be mitigated, yes.

20              Q       And would you consider similar levels of  
21       increases in PM10 due to oil burning at South Bay  
22       and Encina should that occur, a significant  
23       impact?

24              A       You'd have to take that up with the  
25       District.   I said the emissions change, the

1 emissions increase, but I'm not analyzing South  
2 Bay and Encina in this instance.

3 Q I understand you're not analyzing South  
4 Bay and Encina. What I was asking you is whether  
5 you would consider if you were analyzing that,  
6 would you consider similar levels of increases,  
7 similar to the levels of increases you find in  
8 construction emissions, a significant impact, if  
9 that were to be --

10 MR. CARROLL: Objection, calls for  
11 speculation -- sorry.

12 BY MS. LUCKHARDT:

13 Q -- if that were to be found, would that  
14 be a significant impact?

15 MR. CARROLL: Object, it calls for  
16 speculation. If he were to analyze it is the  
17 beginning of the question. It's purely  
18 speculative.

19 MS. LUCKHARDT: It's simply a  
20 hypothesis. It's an example of something to see  
21 what level would be considered a significant  
22 impact.

23 HEARING OFFICER GEFTER: I don't  
24 understand what the connection is between  
25 construction -- emissions during construction and

1 the emissions at South Bay and Encina.

2 MS. LUCKHARDT: Well, I'm trying --

3 HEARING OFFICER GEFTER: There's a very  
4 limited nexus there, I don't understand it.

5 MS. LUCKHARDT: Well, what I'm trying to  
6 find out is at what level would he consider PM10  
7 increases significant.

8 PRESIDING MEMBER LAURIE: I thought I  
9 heard the testimony that it depends on a number of  
10 factors. And Mr. Layton is unable to provide a  
11 generic response to the question.

12 MS. LUCKHARDT: I understand that.  
13 That's why I was using the construction emissions  
14 as an example. That if they were like that, would  
15 that be a significant impact. I was trying to use  
16 something that he had already done that he could  
17 relate to as opposed to just some general  
18 statement.

19 And since he has analyzed the  
20 construction emissions that's why I was using that  
21 as an example.

22 HEARING OFFICER GEFTER: He analyzed  
23 them because those were construction emissions  
24 that would occur during the construction of Otay  
25 Mesa, which is --



1 MS. LUCKHARDT: Absolutely.

2 HEARING OFFICER GEFTER: -- the project  
3 that he --

4 MS. LUCKHARDT: Absolutely.

5 HEARING OFFICER GEFTER: Ask another  
6 question. The objection to this question is  
7 sustained.

8 BY MS. LUCKHARDT:

9 Q Mr. Layton, in your professional opinion  
10 in analyzing power plant projects, what level of  
11 increase in PM10 emissions -- you can qualify it  
12 in any way you like -- is considered a significant  
13 impact?

14 A That would depend on a lot of factors.  
15 It depends on the -- I understand where your  
16 question's going. It really depends on the  
17 background.

18 And in looking at South Bay and Encina  
19 you would have to look at how often fuel oil  
20 firing has been done in the past.

21 And so I would hate to say that -- I  
22 cannot come up with a number. I can't answer your  
23 question, say what is significant or not for South  
24 Bay and Encina, because you would have to look at  
25 the ambient levels. Currently they're permitted

1 at 2000 -- well, between the two of them, 2000  
2 tons per year.

3 Come January 1 they're down to 850. You  
4 might want to include that in any analysis of  
5 impacts. There's a lot of things going on. It  
6 would be a very -- you would want to do a complete  
7 analysis. I would hate to sit here on the stand  
8 and try to come to a conclusion I don't know the  
9 answer to.

10 Q But even though that is occurring there,  
11 you have found a regional PM10 impact due to Otay  
12 Mesa, correct?

13 A Correct, it's a new source.

14 Q So would additional impacts to an  
15 existing source not be considered significant?

16 MR. CARROLL: I just want to object. It  
17 calls again for a legal conclusion. Counsel is  
18 asking this witness, I believe, to make a  
19 statement as to whether or not something is or is  
20 not a direct impact under CEQA.

21 MS. LUCKHARDT: I wasn't asking --

22 MR. CARROLL: Or an indirect impact.

23 MS. LUCKHARDT: I wasn't asking that  
24 question at all.

25 MR. CARROLL: Well, that certainly is

1 the import of the question.

2 HEARING OFFICER GEFTER: Rephrase your  
3 question.

4 PRESIDING MEMBER LAURIE: Before you do  
5 that, just let me note that this witness is unable  
6 to testify as to the increased amount of emissions  
7 resulting from any additional oil burning from  
8 South Bay and Encina. That's his testimony.  
9 You're not going to get anything more out of him.  
10 And I don't want any more questions on it.

11 Maybe some other witness has it. But,  
12 you folks have tried to get at it for the last  
13 hour and there isn't anything there. So, I'm  
14 going to ask you to move on.

15 (Laughter.)

16 PRESIDING MEMBER LAURIE: That's not  
17 just a potted plant sitting there, but he doesn't  
18 know the answer to that question.

19 (Laughter.)

20 HEARING OFFICER GEFTER: Is that --

21 MS. LUCKHARDT: Um-hum.

22 HEARING OFFICER GEFTER: Ms. Duncan, do  
23 you have questions of this witness?

24 MS. DUNCAN: Yes. I'm not going to ask  
25 what we've been talking about.

1 (Laughter.)

2 MS. DUNCAN: I have different questions.  
3 My questions go again to the issues that have been  
4 recently discovered in our scenario about how our  
5 new market situation works. I guess that's the  
6 best way I can describe it.

7 CROSS-EXAMINATION

8 BY MS. DUNCAN:

9 Q And I'm going to ask Matt to recall a  
10 long time ago, a year ago, staff's report number  
11 2. Do you remember that report at all, Matt?

12 A I do not.

13 MS. DUNCAN: I should have entered it as  
14 an exhibit, I guess, --

15 HEARING OFFICER GEFTER: Just ask the  
16 question.

17 BY MS. DUNCAN:

18 Q I will read quickly, under emission  
19 levels during all operating modes. The essence of  
20 it is with a merchant plant the issue that has  
21 been introduced here is that maybe this plant will  
22 run today and maybe it won't. It's going to  
23 depend on the market conditions and whether or not  
24 there's an incentive for a market plant to run.

25 So, the concerns in that status report

1       were exactly that.  Concerns have been raised in  
2       your FSA about the emission levels during startup,  
3       shutdown and all of the other levels in between.

4               How do you feel that your FSA has  
5       adequately addressed concerns about what all those  
6       different levels for emissions are in this new  
7       deregulated market in terms of how this plant, a  
8       merchant plant, whether it will or will not run?

9               I raised the issue earlier about how did  
10      the emission level change in different modes,  
11      different loads, and I think all of these are some  
12      analysis that's missing in our air quality --

13              HEARING OFFICER GEFTER:  What is your  
14      question?  You need to just get to the question.

15      BY MS. DUNCAN:

16              Q     Has this been analyzed?  Is it contained  
17      in your FSA?  I didn't see any analysis done in  
18      this area.

19              A     The applicant, in their AFC and  
20      subsequent submittals, did analyze various  
21      emission rates.  And then also various stack  
22      parameters.

23              A turbine operating, as Mr. Fontana  
24      testified earlier today, the emission rates can go  
25      down at lower loads, but the impacts can go up

1       because the stack parameters change. The  
2       temperature and the velocity of the stack plume  
3       change.

4               We tried to look at the various  
5       parameters this plant would experience. I think  
6       they bounded the worst case by the 50 percent  
7       load.

8               I don't see this project operating at  
9       less than 50 percent. Number one, I think they  
10      would end up violating their permit conditions,  
11      which they would suffer significant financial  
12      losses if they did that.

13            Q     Well, my question is motivated from the  
14      fact that we have now, in terms of alternatives  
15      analysis and in terms of the transmission  
16      problems, we have a scenario where we're talking  
17      about them working at 100 to 150 megawatts, which  
18      I think is less than the 50 percent.

19               And there's supposed to be a study done?  
20      You asked staff to do a study by December 1st.  
21      So, that's what's motivating my question. I mean  
22      that, I think, is something that we haven't  
23      addressed. Am I right or wrong about that?

24            A     Well, I think there are two units out  
25      there, and if you had to go to very low loads, say

1       150 megawatts for the entire facility, you would  
2       shut down one unit all together, and operate the  
3       other one at less than full load.

4                You may end up dumping some steam.

5       There's various options to operating at less than  
6       100 percent capacity. You can either curtail --

7                Q     Is this in your analysis? That's what  
8       I'm asking.

9                A     No, but --

10              Q     Okay, that's my question. So do we have  
11     a possible situation --

12              A     They looked at --

13              Q     -- missing from our analysis?

14              A     I believe not. I believe they analyzed  
15     the range of operational parameters that this  
16     project could experience.

17              Q     In terms of the offset package for this  
18     project, what was the level of operation that  
19     determined what the offsets for each of the  
20     criteria pollutants are?

21              A     The worst case emissions.

22              Q     At what load?

23              A     It depends. Some pollutants go up with  
24     lowering load, and some pollutants go down with  
25     lowering loads.

1                   And so we came up with the worst case  
2           emissions for the year based on the hours of  
3           operation and the likely scenarios of operation  
4           and came up with the worst case emissions.

5           Q     Okay, so is it safe to say that we're  
6           making some assumptions here on how much it's  
7           going to be running, --

8           A     Yes.

9           Q     -- and that that's contained in your  
10          analysis?

11          A     I'd defer a lot to the AFC because I  
12          believe they did a very extensive analysis on how  
13          they might operate the unit. And also the FDOC  
14          looked at a range of emissions over the life of  
15          the project, or over an annual --

16          Q     Would you disagree with me that's  
17          somewhat speculative?

18          A     I would disagree with you it's somewhat  
19          speculative. I think the operation of this plant  
20          and the emissions from this plant are fairly well  
21          known.

22                   These projects are being built  
23          throughout the world, throughout California. I  
24          believe that the operation of these units will  
25          come very very close to the way this thing is



1       permitted.

2               There may be some slight changes or  
3       slight differences, but I don't think it will  
4       affect the permits or the mitigation package for  
5       this project.

6           Q     So you believe that the status report  
7       number two that identified potential problems,  
8       that that's been addressed, a constant turning on  
9       and off situation scenario?

10          A     Yes.  We analyzed -- we tried to analyze  
11       the various emissions that occur during these  
12       transient conditions.  And I think we did analyze  
13       them, or the applicant did analyze them, yes.

14          Q     You believe that they're not going to be  
15       very transient, that they'll happen infrequently?

16          A     No, I think the transient conditions  
17       will occur, but I think they've been analyzed.  If  
18       you go back to one of the conditions in here talks  
19       about the worst case during commissioning for CO  
20       and I think PM10.  Actually I don't -- for CO I'm  
21       sure, forget what the other pollutant is.

22               But they did analyze a worst case for  
23       when this thing might be operating without air  
24       pollution control equipment installed.  And the  
25       numbers are very high.  That would be a good

1 example of how they're trying to bound any  
2 transient conditions.

3 I think they've done a very good job. I  
4 think this project is well defined from its  
5 emissions, and then well modeled for its impacts.

6 MS. DUNCAN: Those are the only  
7 questions I have. Thank you.

8 HEARING OFFICER GEFTER: Mr. Claycomb.

9 MR. CLAYCOMB: Save Our Bay, Inc. has no  
10 questions.

11 HEARING OFFICER GEFTER: Does staff have  
12 any redirect at this point?

13 MR. OGATA: Actually I had a couple of  
14 questions but in light of Commissioner Laurie's  
15 statement, I believe we don't need to go over them  
16 again.

17 (Laughter.)

18 MR. OGATA: In fact, Mr. Layton does not  
19 have the information with respect to frequency  
20 duration and seasonality to make his analysis, so  
21 I won't bother to --

22 PRESIDING MEMBER LAURIE: Well, don't do  
23 that. If there's something relevant you need to  
24 ask, you go ahead and take your turn.

25 MR. OGATA: Thank you, Commissioner

1 Laurie, but I think you just gave me an  
2 opportunity to say what I wanted to say without  
3 asking Mr. Layton, so I'll defer. Thank you.

4 PRESIDING MEMBER LAURIE: Fine.

5 HEARING OFFICER GEFTER: Do you want to  
6 move exhibit 88?

7 MR. CARROLL: Ms. Gefter, we just have  
8 one follow-up question, if we may, of this  
9 witness.

10 HEARING OFFICER GEFTER: Go ahead.

11 MR. CARROLL: Thank you.

12 CROSS-EXAMINATION

13 BY MR. CARROLL:

14 Q Mr. Layton, during the evidentiary  
15 hearings yesterday counsel, Mr. Ogata, stated that  
16 staff did not, in the FSA, analyze the air quality  
17 implications of additional fuel oil burns at  
18 Encina and South Bay because he believed that to  
19 do so would be speculative.

20 Do you agree with Mr. Ogata's statement?

21 A I didn't hear the conversation therefore  
22 I'm not sure of the context. But on its face, I  
23 would say, yes, I agree with Mr. Ogata.

24 MR. CARROLL: Thank you, Mr. Layton.

25 MR. OGATA: At this time we would move

1 exhibit 88 into the record, and as stated before,  
2 we will move Mr. Layton's testimony in the final  
3 staff assessment into the record when the other  
4 piece of testimony from that exhibit have been  
5 admitted.

6 HEARING OFFICER GEFTER: Any objections  
7 to --

8 MS. LUCKHARDT: I have one more question  
9 in light of --

10 HEARING OFFICER GEFTER: You can do some  
11 recross. Let's just get exhibit 88 in.

12 MS. LUCKHARDT: Okay.

13 HEARING OFFICER GEFTER: Are there any  
14 objections to receiving exhibit 88 into the  
15 record? Hearing no objections, exhibit 88 is now  
16 received into the record.

17 Ms. Luckhardt, do you have cross-  
18 examination of the witness?

19 MS. LUCKHARDT: Just one question.

20 RECROSS-EXAMINATION

21 BY MS. LUCKHARDT:

22 Q In your response to applicant's  
23 attorney, does that -- that is simply as an air  
24 quality expert, is that true? That is not  
25 analyzing the gas system or the electric system,

1 is that correct?

2 A That's correct, thank you.

3 MS. LUCKHARDT: Thank you.

4 HEARING OFFICER GEFTER: Mr. Layton may  
5 be excused. Staff are you sponsoring the  
6 testimony of the Air District?

7 MR. OGATA: Yes, we are.

8 HEARING OFFICER GEFTER: Okay, we're  
9 going to take a recess at this point. Let's go  
10 off the record.

11 (Brief recess.)

12 HEARING OFFICER GEFTER: Back on the  
13 record.

14 Mr. Ogata, I understand you're going to  
15 be sponsoring the Air District's witnesses?

16 MR. OGATA: That's correct.

17 HEARING OFFICER GEFTER: And also the  
18 FDOC?

19 MR. OGATA: That's correct.

20 HEARING OFFICER GEFTER: You may begin.

21 MR. OGATA: Thank you, Ms. Gefter.

22 At this time we'd like to call the  
23 representatives from the Air District, Arthur  
24 Carbonell, Steve Moore, Dan Speer, Ralph DiSienana  
25 and Mike Lake, and have them all sworn as a panel.

1           Mr. Carbonell will be the witness for  
2           the final determination of compliance. But as I  
3           indicated earlier, all these gentlemen will be  
4           available to the Committee to respond to questions  
5           that you may have about the Air District's rules,  
6           regulations and policies.

7           HEARING OFFICER GEFTER: Would the  
8           reporter swear the witnesses as a panel.  
9           Whereupon,

10          ARTHUR CARBONELL, STEVEN MOORE, DANIEL SPEER,  
11          RALPH DiSIENANA and MICHAEL LAKE  
12          were called as witnesses herein, and after first  
13          having been duly sworn, were examined and  
14          testified as follows:

15          HEARING OFFICER GEFTER: And then for  
16          the record would each witness please introduce  
17          yourself, tell us your name.

18          MR. LAKE: Michael Lake with the Air  
19          Pollution Control District.

20          HEARING OFFICER GEFTER: You need to  
21          come to a microphone. You can sit right there.

22          MR. LAKE: Michael Lake with the Air  
23          Pollution Control District.

24          HEARING OFFICER GEFTER: Thank you.

25          MR. DiSIENANA: Ralph DiSienana, Air

1 Pollution Control District.

2 MR. MOORE: Steve Moore, Air Pollution  
3 Control District.

4 MR. CARBONELL: Arthur Carbonell, Air  
5 Pollution Control District.

6 DIRECT EXAMINATION

7 BY MR. OGATA:

8 Q Mr. Carbonell, could you please tell us  
9 your position at the Air District.

10 MR. CARBONELL: I was the Air Pollution  
11 Control Engineer with the responsibility of  
12 writing the final determination of compliance for  
13 the Otay Mesa project.

14 MR. OGATA: Do you have any changes or  
15 corrections you'd like to make at this time?

16 MR. CARBONELL: No, I do not.

17 MR. OGATA: Ms. Gefter, I think for the  
18 record we need to identify the final determination  
19 of compliance, the FDOC, as exhibit 93.

20 HEARING OFFICER GEFTER: Yes, that will  
21 be identified as exhibit 93.

22 MR. OGATA: Mr. Carbonell, could you  
23 please summarize for us your testimony. Summarize  
24 the contents of the FDOC.

25 MR. CARBONELL: The FDOC basically

1 analyzed the emissions from the Otay Mesa project  
2 and found them to be, with the conditions of the  
3 FDOC, to be in compliance with all the rules and  
4 regulations of the District.

5 MR. OGATA: Can you explain a little bit  
6 about the District's rules with respect to PM10?

7 MR. CARBONELL: What specifically about  
8 PM10?

9 MR. OGATA: Do you have any conditions  
10 with respect to PM10 emissions for the Otay Mesa  
11 project?

12 MR. CARBONELL: Yes, we have hourly  
13 emission limits for PM10.

14 HEARING OFFICER GEFTER: What are those  
15 emission limits? And how are they derived? Where  
16 did you -- how are they established?

17 MR. CARBONELL: They were the estimated  
18 maximum emissions provided by the applicant. And  
19 annual source testing will show compliance with  
20 the limit --

21 HEARING OFFICER GEFTER: How did you  
22 arrive at the limit? Is that a regulation of the  
23 Air District?

24 MR. CARBONELL: No. It was the  
25 estimated maximum from this project which was



1 analyzed.

2 HEARING OFFICER GEFTER: Is the reporter  
3 hearing you, or could you move the microphone  
4 closer, I think she's having trouble hearing you.

5 MR. OGATA: I have no further questions.

6 EXAMINATION

7 BY HEARING OFFICER GEFTER:

8 Q I think for the edification of the  
9 Committee and for the intervenors, if one of the  
10 witnesses from the Air District could explain to  
11 us, give us a very quick overview of your  
12 jurisdiction and how it's derived, and how you  
13 incorporate both federal and state standards into  
14 your rules.

15 MR. MOORE: Steve Moore, APCD.  
16 Basically our District rules and regulations are  
17 to implement the Federal Clean Air Act and the  
18 California Clean Air Act.

19 And we determine compliance with both of  
20 those statutes.

21 HEARING OFFICER GEFTER: Does the  
22 applicant have any cross-examination of the  
23 witnesses?

24 MR. CARROLL: No, we do not at this  
25 time.

1 HEARING OFFICER GEFTER: Okay.

2 Cabrillo.

3 MR. VARANINI: Yes, we have a couple  
4 questions, and they really go to the two  
5 gentlemen. Some of the gentlemen there I know  
6 have been following the proceedings very  
7 carefully, and others have been in on an  
8 intermediate basis.

9 We have a couple of questions because of  
10 concerns that have been related throughout the  
11 record concerning rule 69, and the availability of  
12 gas and gas management and fuel management under  
13 that rule.

14 And I'd just like to know which of the  
15 gentlemen is the person who would like to testify  
16 on rule 69. Or do you just want me to ask the  
17 questions, and you decide who wants to answer?  
18 Perfectly okay.

19 MR. MOORE: Just ask the questions.

20 MR. VARANINI: Okay.

21 CROSS-EXAMINATION

22 BY MR. VARANINI:

23 Q Under rule 69 is gas curtailment a force  
24 majeure? In order to burn fuel to maintain  
25 electricity in the San Diego region?

1 MR. MOORE: In some situations, yes.

2 MR. VARANINI: And can you give us just  
3 a brief discussion of those situations?

4 MR. MOORE: Obviously if there's an  
5 earthquake and the gas supply is severed that  
6 would be force majeure. It's likely that a run,  
7 RMR situation, a must run situation would be force  
8 majeure.

9 Right now the District is looking at  
10 additional situations that might be considered  
11 force majeure under the newly deregulated  
12 electricity market.

13 MR. VARANINI: And does the rule  
14 literally discuss curtailment just as a term  
15 curtailment as an event which brings forth force  
16 majeure at this time?

17 MR. MOORE: Yes, it does.

18 MR. VARANINI: We have no further  
19 questions.

20 HEARING OFFICER GEFTER: Duke Energy.

21 MS. LUCKHARDT: I'm just wondering if we  
22 can enter the November 17, 2000 letter from the  
23 Air District into the record. I'd just as soon,  
24 since it was filed the last day that air quality  
25 testimony was required, that it would have been an

1 item, an exhibit for the record. And I'm  
2 wondering if anyone has any objection to having  
3 that entered into the record.

4 HEARING OFFICER GEFTER: Okay, that  
5 would be --

6 MS. LUCKHARDT: It's an Air District  
7 letter to Commissioner Laurie and Robert Pernell,  
8 dated November 17, 2000.

9 HEARING OFFICER GEFTER: It's identified  
10 as exhibit 84 on our exhibit list. Does Duke want  
11 to sponsor that letter?

12 MS. LUCKHARDT: I don't know that we can  
13 sponsor it since we don't have a witness, but  
14 since the Air District drafted the letter and is  
15 here today, I'm wondering if we could have them  
16 enter it into the record. Would that be an  
17 appropriate --

18 HEARING OFFICER GEFTER: It's on the  
19 list as sponsored by the Committee, because I did  
20 want it in the record.

21 MS. LUCKHARDT: Oh, okay.

22 HEARING OFFICER GEFTER: You can ask  
23 questions about exhibit 84 if you want to ask some  
24 questions about it.

25 MS. LUCKHARDT: No, that's fine. I

1       guess I just missed that it was already an exhibit  
2       that you were planning on having into the record.  
3       So I just want to make sure it got in.

4               HEARING OFFICER GEFTER:  Is there any  
5       objection from any party to having this letter a  
6       part of our record?

7               MR. CARROLL:  No objection.

8               HEARING OFFICER GEFTER:  Okay, exhibit  
9       84 will be admitted.  Do you have questions,  
10      because --

11              MS. LUCKHARDT:  No.

12              HEARING OFFICER GEFTER:  -- this is your  
13      last chance to ask them.  Okay.

14              MR. CARROLL:  I'm sorry to interrupt.  
15      Along the same lines there was also a letter from  
16      the District.  It was submitted with Mr.  
17      Caldwell's prepared testimony.  It is an August  
18      29, 2000 letter to Mr. Kent Williams at Cabrillo  
19      Power One from Mr. Richard Smith at the District.

20              What we'd like to do is separate that  
21      letter from the testimony and ask that it be  
22      marked as an exhibit and introduced into the  
23      record.

24              HEARING OFFICER GEFTER:  This was  
25      prepared testimony of Mr. Caldwell.  And tell us

1 where we can find that, is that exhibit --

2 MR. CARROLL: I'm sorry, it's part of  
3 exhibit 75.

4 HEARING OFFICER GEFTER: Okay, we can  
5 separate that letter. The letter is dated August  
6 29th. It's to Cabrillo from the Air District.  
7 And that will be exhibit 94.

8 And is the applicant sponsoring this  
9 letter?

10 MR. CARROLL: We can sponsor the letter  
11 or ask that the District sponsor it.

12 HEARING OFFICER GEFTER: Well, the  
13 District can't sponsor because they're not a  
14 party.

15 MR. CARROLL: Yes, we would like to  
16 sponsor the letter.

17 HEARING OFFICER GEFTER: Is there any  
18 objection to this letter? Do you want to ask  
19 questions about the letter, or do you want to ask  
20 Cabrillo questions about the letter?

21 MR. CARROLL: No, we don't.

22 HEARING OFFICER GEFTER: Is there any  
23 objections to exhibit 94 being received into the  
24 record?

25 MR. VARANINI: No.

1 HEARING OFFICER GEFTER: All right,  
2 exhibit 94 is received into the record.

3 MR. CARROLL: Thank you.

4 HEARING OFFICER GEFTER: Does Ms. Duncan  
5 have questions of the Air District?

6 MS. DUNCAN: Yes, I do. Thank you.

7 CROSS-EXAMINATION

8 BY MS. DUNCAN:

9 Q You were just talking about the rule 69,  
10 and you mentioned something, Mr. Moore, about the  
11 deregulated market. Is it safe to say that the  
12 rule 69 predates deregulation as it currently  
13 stands?

14 MR. MOORE: Yes.

15 MS. DUNCAN: Have there been any  
16 alterations to that rule as a result of  
17 deregulation?

18 MR. MOORE: No.

19 MS. DUNCAN: In terms of deregulation do  
20 you think that this rule will be utilized more  
21 frequently?

22 MR. MOORE: I'm not sure what you mean  
23 by that.

24 MS. DUNCAN: Well, we have people asking  
25 you about force majeure and one of your responses

1 was that an example of that might be an RMR. And  
2 that is a new animal, so to speak, as a result of  
3 deregulation, is that correct?

4 MR. MOORE: I believe RMR has been  
5 around for a long time.

6 MS. DUNCAN: Okay, so that would, I  
7 guess what I'm hearing is we might be seeing more  
8 force majeure as a result of deregulation?  
9 That's what we've heard over the past few days  
10 regarding the gas reliability issues, transmission  
11 issues.

12 MR. MOORE: It's not clear that force  
13 majeure -- I assume you're speaking about gas  
14 curtailment, is that correct?

15 MS. DUNCAN: Um-hum.

16 MR. MOORE: I think the situation with  
17 gas curtailment is because we do not have enough  
18 gas supply in San Diego County right now, at least  
19 that's what it appears to us, based on what we've  
20 seen so far.

21 MS. DUNCAN: In terms of potential  
22 emissions as a result possible -- potential  
23 emissions as a result of a situation like that,  
24 how does my local Air Pollution Control District  
25 intend to protect the public's health with the air



1 quality impacts?

2 MR. MOORE: Everyone has to comply with  
3 their permits basically, all the generating  
4 utilities. And those conditions are designed to  
5 protect the public health, they're based on our  
6 rules and regulations.

7 MS. DUNCAN: So will RMR be considered  
8 force majeure or not? Or it's --

9 MR. MOORE: It's likely --

10 MS. DUNCAN: -- based on an individual  
11 case?

12 MR. MOORE: It's likely to be considered  
13 a force majeure.

14 MS. DUNCAN: Okay. Thank you, that's  
15 all I wanted to ask.

16 HEARING OFFICER GEFTER: Mr. Claycomb.

17 MR. CLAYCOMB: No questions.

18 HEARING OFFICER GEFTER: All right.

19 Does Mr. Ogata have redirect?

20 MR. OGATA: No.

21 HEARING OFFICER GEFTER: No, all right.

22 EXAMINATION

23 BY HEARING OFFICER GEFTER:

24 Q With respect to rule 69 and the request  
25 for variances, the requirements under rule 69 by

1       Cabrillo and Duke, somebody from the Air District,  
2       can you tell us what the status of those variances  
3       are, the requests and the actual granting of the  
4       variances?

5               MR. MOORE: I can do that. I'm Steve  
6       Moore.

7               Both the facilities have received a  
8       variance. Encina Energy Facility has received a  
9       variance from rule 69, from complying with the  
10      emissions standards in rule 69. That's the .15  
11      pounds per megawatt hour.

12              That standard would have gone into  
13      effect as of January 1, 2001, based on the fact  
14      that the plant was sold by SDG&E. Had it not been  
15      sold there would have been an emission cap in  
16      place that would have decreased over time. But  
17      since the plant was sold, unit specific standards  
18      went into effect.

19              They received a variance from that  
20      standard until they could install selective  
21      catalytic reduction equipment which would allow  
22      them to comply with the standard.

23              The variance has various dates when the  
24      units are supposed to be retrofitted with SCR.  
25      The last date, I believe, is July 1, 2003, when

1 the last unit would have SCR on it. At that point  
2 they would all have SCR and would all be in  
3 compliance with rule 69.

4 The other facility, Duke Energy Facility  
5 at South Bay, received a variance for unit four.  
6 Units one, two and three are expected to have SCR  
7 on and be able to comply with the rule after they  
8 start up.

9 I believe unit one already has SCR on;  
10 unit two is down to get SCR on, and should have it  
11 on by the end of the year. Unit three will go  
12 down and get SCR in the spring of this year,  
13 basically, and they'll all be able to comply with  
14 .15.

15 Unit four has a variance until right now  
16 I believe it's September 29th of next year to  
17 allow them time to install SCR and some additional  
18 control equipment on that unit. At that time it  
19 will be able to comply with the standards in rule  
20 69.

21 HEARING OFFICER GEFTER: Is there, from  
22 your understanding of these requests for  
23 variances, is there any requirement pending where  
24 either South Bay or Encina will not be able to  
25 burn fuel oil after January 1, 2001?

1                   MR. MOORE: Both the variances have  
2                   emission caps in them that apply to the  
3                   facilities, as well, during the period of the  
4                   variance.

5                   There is no requirement in the variance  
6                   that would preclude them from burning fuel oil.  
7                   In the case of the South Bay facility there's a  
8                   built-in provision that their cap basically makes  
9                   allowance for fuel oil burning. There's a stated  
10                  cap in there, but there is an allowance to adjust  
11                  it for fuel oil burning.

12                  In the case of the facility, Encina  
13                  facility, there is a cap, and we would have to  
14                  take a look at the record of the variance granting  
15                  to decide whether or not there was any allowance  
16                  for fuel oil burning. They can burn fuel oil, but  
17                  it would count against the cap. That's the bottom  
18                  line.

19                  HEARING OFFICER GEFTER: Is the cap a  
20                  year-long cap or how is it calculated?

21                  MR. MOORE: It's a cap until the end of  
22                  the variance.

23                  HEARING OFFICER GEFTER: Is it  
24                  calculated on a daily basis or --

25                  MR. MOORE: It's an annual --

1                   HEARING OFFICER GEFTER:  -- is it --  
2           it's an annual.

3                   MR. MOORE:  -- it's an annual cap.

4                   HEARING OFFICER GEFTER:  That's what my  
5           question was.

6                   MR. LAKE:  If I could provide just a  
7           little bit more information.  Michael Lake with  
8           the Air Pollution Control District.

9                   What Steve was referring to with regard  
10          to the variances was in reference to force majeure  
11          oil burning.

12                   Economic oil burning is not allowed as  
13          of January 1, 2001 under the permits to operate  
14          for the two power plants.  And that was a  
15          condition that was imposed as a result of the sale  
16          of the power plants by the PUC.

17                   HEARING OFFICER GEFTER:  And, again, the  
18          definition of force majeure would be primarily  
19          either some sort of like an earthquake situation,  
20          or an RMR contract request, is that --

21                   MR. LAKE:  Well, those would almost  
22          certainly be considered.  There might be other  
23          conditions that would qualify as force majeure  
24          that we're looking at.

25                   There are other aspects to the

1 definition of force majeure in rule 69 that deal  
2 with whether or not the gas curtailment is  
3 unforeseen and also beyond the control of the  
4 power plant operator.

5 So we're still investigating that aspect  
6 of those situations that might also qualify for  
7 force majeure.

8 (Pause.)

9 HEARING OFFICER GEFTER: Back to the  
10 question about the annual cap for both the Encina  
11 and South Bay projects. Is there an actual  
12 definition in the variances with respect to the  
13 cap?

14 MR. MOORE: Do you mean how large it is?  
15 Yes, there is.

16 HEARING OFFICER GEFTER: Do you know it  
17 offhand, or is it accessible to staff and the  
18 applicant?

19 MR. MOORE: Yeah, we can look it up.

20 HEARING OFFICER GEFTER: Okay. And  
21 that's with respect to each of the units at each  
22 of these projects?

23 MR. MOORE: It's an overall cap on the  
24 entire facility.

25 HEARING OFFICER GEFTER: On the whole

1 facility, okay. And when you say it's an annual  
2 cap, does it go from January 1 to December 31st of  
3 each year?

4 MR. MOORE: Yes.

5 HEARING OFFICER GEFTER: And, again,  
6 beginning January 1, the cap only applies to force  
7 majeure events, is that what we have heard you  
8 say?

9 MR. MOORE: The cap applies to all the  
10 emissions from the facility. What Mike Lake was  
11 saying was that they can only burn oil through  
12 force majeure after January 1st because of permit  
13 condition that was a result of the CEQA analysis  
14 done for the sale of the SDG&E plants.

15 HEARING OFFICER GEFTER: We're looking  
16 at the variance from the South Bay unit four.  
17 There is -- emissions from South Bay are limited  
18 to 259 tons per calendar year commencing on  
19 January 1, 2000. Is that the cap for the entire  
20 plant?

21 MR. MOORE: That's right.

22 HEARING OFFICER GEFTER: Do you know  
23 what it is for --

24 MR. MOORE: It's 419 tons per year for  
25 Encina.

1 HEARING OFFICER GEFTER: For Encina.

2 MS. LUCKHARDT: Just to clarify the  
3 record, the variance order has not yet been  
4 issued. You may be looking at the application for  
5 the variance.

6 HEARING OFFICER GEFTER: We're looking  
7 at a letter that was signed by the Hearing Board.

8 MS. LUCKHARDT: Do you have the --

9 PRESIDING MEMBER LAURIE: Yeah, I don't  
10 think that's a Board --

11 MS. LUCKHARDT: -- has the variance --

12 PRESIDING MEMBER LAURIE: -- I think  
13 that's a District Staff letter.

14 HEARING OFFICER GEFTER: Maybe so, yeah.  
15 All right, it's a staff letter.

16 MR. MOORE: She's quite correct, the  
17 Hearing Board order has not come down yet, but --

18 HEARING OFFICER GEFTER: All right.

19 MR. MOORE: -- there's not going to be  
20 any change, I don't believe, in the cap.

21 HEARING OFFICER GEFTER: Okay. Thank  
22 you.

23 If SDG&E had not sold these plants to  
24 Duke and to Cabrillo, would the limits have been  
25 different?



1                   MR. MOORE: There would have been no  
2                   specific limits on any of the units. They would  
3                   have just had to comply with a cap. It would have  
4                   decreased to 800 tons. It was 2100 tons up until  
5                   the end of this year, and it would have decreased  
6                   to 800 tons starting January 1st of next year.

7                   HEARING OFFICER GEFTER: So the caps on  
8                   these projects then, as a result of the sale, were  
9                   imposed as a result of your CEQA analysis?

10                  MR. MOORE: The requirement for force  
11                  majeure, only burning oil in case of force  
12                  majeure, was applied as a result of the CEQA  
13                  analysis. And the caps were also applied in the  
14                  interim until the new standards took effect the  
15                  first of this year.

16                  I should all, there's some allowance for  
17                  burning oil for testing and things like that in  
18                  addition to force majeure. But it's a limited  
19                  amount.

20                  HEARING OFFICER GEFTER: With respect to  
21                  the Otay Mesa project, could this project be  
22                  permanent as a dual fuel project, could it be  
23                  allowed to burn fuel oil instead of natural gas in  
24                  the event of a gas curtailment?

25                  MR. MOORE: I guess the answer to that

1 is we don't know, we have not evaluated it for  
2 burning alternate fuels. The project, as given to  
3 us, was only for burning natural gas.

4 HEARING OFFICER GEFTER: Does any other  
5 party have questions of the witnesses before they  
6 are excused?

7 MR. CARROLL: Just one follow-up  
8 question in response to the response to the last  
9 question.

10 CROSS-EXAMINATION

11 BY MR. CARROLL:

12 Q For anyone on the District Staff, in  
13 terms of the best available control technology  
14 requirements for PM10 and sulfur emissions issued  
15 by the California Air Resources Board, do you know  
16 what the BACT requirement is for projects like  
17 Otay Mesa?

18 MR. MOORE: We would have to look that  
19 up. I believe BACT is natural gas burning for  
20 both PM10 and the sulfur with the limit on the  
21 sulfur content.

22 MR. CARROLL: Thank you.

23 MR. VARANINI: I have a question.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. VARANINI:

3 Q To the best of your knowledge would a  
4 propane or compressed natural gas backup  
5 essentially meet BACT requirements?

6 MR. MOORE: I assume compressed natural  
7 gas would meet the BACT requirements, since it  
8 would still be firing natural gas just like it is  
9 now, just a different source.

10 Propane probably. We haven't evaluated  
11 it, but probably.

12 MR. VARANINI: Thank you.

13 HEARING OFFICER GEFTER: The Air  
14 District witnesses may be excused. However, we  
15 would ask at least one or two of you could stay  
16 around for awhile depending on additional  
17 testimony that we may hear from other witnesses on  
18 air quality.

19 Thank you very much.

20 MR. OGATA: Ms. Gefter, at this point  
21 I'd like to move exhibit 93 into the record.

22 HEARING OFFICER GEFTER: Any objection  
23 to receiving exhibit 93, which is the FDOC, into  
24 the record?

25 MR. CARROLL: No objection.

1 HEARING OFFICER GEFTER: Hearing no  
2 objections, exhibit 93 is now received into the  
3 record.

4 MR. OGATA: And on behalf of staff we  
5 would certainly like to thank the Staff at the Air  
6 District and Deputy County Counsel Terry Dutton.  
7 They've been extremely extremely helpful and  
8 cooperative to staff. So we want to extend our  
9 thanks.

10 HEARING OFFICER GEFTER: Does staff have  
11 any other witnesses on air quality?

12 MR. OGATA: No, we do not.

13 MR. CARROLL: Ms. Gefter, point of  
14 clarification on the exhibits. We would also like  
15 to request that certain exhibits that were part of  
16 the discussion that we just had be moved into the  
17 record, some of which have been marked, some of  
18 which have not been marked.

19 Exhibit 86 is the package related to the  
20 Duke Energy South Bay variance. It begins with a  
21 cover letter from the staff which you referred to,  
22 November 8, 2000 cover letter.

23 The variance packet which has been  
24 served on the parties by applicant, but not marked  
25 as an exhibit, the variance package with Cabrillo

1 Power One LLC, which is the Board order, as I  
2 said, has not been marked as an exhibit, but we'd  
3 like to have that marked and have both of those  
4 moved into the record.

5 In addition to that we have a copy, at  
6 this time only one copy, of the mitigated negative  
7 declaration issued by the CPUC which resulted in  
8 the existing conditions in the permits that were  
9 discussed. And if the Committee thinks that that  
10 would be helpful to have that in the record, we'd  
11 be happy to make copies of that and sponsor that,  
12 as well.

13 MS. LUCKHARDT: I would have to object  
14 to that at this point since I haven't seen that  
15 document.

16 HEARING OFFICER GEFTER: We'd like to  
17 see it, in that we can identify it.

18 MR. CARROLL: Sure, absolutely. That  
19 was actually the offer, was if people thought it  
20 would be helpful we would make copies so that  
21 everybody could look at it, and then seek to have  
22 it introduced. And we will do that.

23 MR. GOLDMAN: I'm concerned that the  
24 document regarding Cabrillo may be obsolete. It  
25 may not be the most recent filing, but I'm not

1       sure because I have not seen the document.

2               HEARING OFFICER GEFTER:   With respect to  
3       the variance package?

4               MR. GOLDMAN:   Yes.

5               HEARING OFFICER GEFTER:   Okay, if we  
6       could get the most recent document, then that  
7       would be marked as exhibit 95.

8               MR. CARROLL:   With respect to Cabrillo,  
9       I don't believe it's been superseded.  This is the  
10      final Board order that was issued dated October  
11      14, 1999.

12              MR. GOLDMAN:   I'm informed that a  
13      subsequent order has superseded that.

14              HEARING OFFICER GEFTER:   If the parties  
15      can provide that to us, then we would substitute  
16      that into exhibit 95, the most recent Hearing  
17      Board order on the variance package for Cabrillo.

18              MR. VARANINI:   That's fine.

19              HEARING OFFICER GEFTER:   All right.  At  
20      this point is there objection to exhibits 86 and  
21      95 being received into the record?  Hearing no  
22      objection, --

23              MS. LUCKHARDT:   Still trying to figure  
24      out what -- so the November 8th -- is that the  
25      entire November 8th package, 95?

1 MR. CARROLL: Yes.

2 HEARING OFFICER GEFTER: 86.

3 MR. CARROLL: Oh, I'm sorry, yes, 86.

4 HEARING OFFICER GEFTER: 86 is Duke

5 Energy's package. 95 is Cabrillo's package.

6 Apparently Cabrillo has a recent Hearing Board

7 order. And my understanding is that Duke is

8 pending the Hearing Board order, correct?

9 MS. LUCKHARDT: Yeah, that's fine, we've  
10 talked about it. It's here.

11 HEARING OFFICER GEFTER: Okay. Well,  
12 what we'll do is with exhibit 86, at such time  
13 that the Hearing Board order is filed, we will  
14 substitute the package, we will actually add the  
15 Hearing Board order to the package.

16 And with respect to exhibit 95, we will  
17 add the most recent Hearing Board order to that  
18 package.

19 MR. CARROLL: Thank you.

20 HEARING OFFICER GEFTER: Hearing no  
21 objection, exhibits 86 and 95 are received into  
22 the record with the proviso that I just described.

23 At this point we understand that  
24 Cabrillo has a witness on air quality.

25 MR. VARANINI: Cabrillo calls Gary

1 Rubenstein. He needs to be sworn.

2 Whereupon,

3 GARY RUBENSTEIN

4 was called as a witness herein, and after first

5 having been duly sworn, was examined and testified

6 as follows:

7 DIRECT EXAMINATION

8 BY MR. VARANINI:

9 Q Mr. Rubenstein, would you identify  
10 yourself and indicate your background for the  
11 Commission.

12 A My name is Gary Rubenstein; I'm a Senior  
13 Partner with the firm of Sierra Research, an air  
14 quality consulting firm based in Sacramento,  
15 California. I have been working in the field of  
16 air pollution control for approximately 28 years  
17 now.

18 That includes a period of seven years  
19 with the Staff of the California Air Resources  
20 Board and 19 years with Sierra Research.

21 I have participated in a number of  
22 proceedings before this Commission over the last  
23 20-odd years, which were listed in my written  
24 testimony.

25 And my particular expertise is in the



1 area of air emissions from a variety of different  
2 types of industrial facilities, specifically  
3 including power plants.

4 Q Did you prepare the testimony of some 15  
5 pages including appendices and charts for this  
6 proceeding?

7 A Yes, I did.

8 Q And do you have any changes, additions  
9 or corrections to that material?

10 A No, I do not.

11 Q Is that material true and correct to the  
12 best of your knowledge?

13 A Yes, it is.

14 Q And was it prepared by you or under your  
15 direction?

16 A Yes, it was.

17 HEARING OFFICER GEFTER: Mr. Varanini,  
18 that testimony of Gary Rubenstein is identified as  
19 exhibit 82 in our exhibit list.

20 BY MR. VARANINI:

21 Q Would you like to summarize your  
22 testimony, please.

23 A I'd be happy to. First of all, let me  
24 clearly state for the record that I am not here  
25 today in opposition to the Otay Mesa Generating

1 Project.

2 In specific response to the questions by  
3 Commissioner Laurie yesterday afternoon regarding  
4 sort of an XYZ explanation of what the issue is  
5 regarding gas availability and specifically how  
6 that relates to air emissions, I'd like to discuss  
7 this first in the context of an analogy that the  
8 Commission is very familiar with because you  
9 discussed it this morning, which has to do with  
10 the PM10 air quality impacts from this project.

11 As you heard, there are existing  
12 violations of the state ambient air quality  
13 standard for PM10. Analogously, as exhibited most  
14 recently last week, there are existing conditions  
15 that can lead to a curtailment of natural gas  
16 supplies to the Encina and South Bay Power Plants  
17 forcing them to convert to burn number 6 oil.

18 Going back to the PM10 analogy, the  
19 Commission Staff properly asked whether the Otay  
20 Mesa project would cause a new violation of the  
21 state PM10 air quality standard.

22 Similarly, we believe the question  
23 that's before this Commission is will the Otay  
24 Mesa project cause additional curtailments to the  
25 natural gas supplies to the two existing power

1 plants.

2           Going back to the PM10 analogy now,  
3 through a very extensive dispersion modeling  
4 analysis the Commission Staff concluded that the  
5 Otay Mesa project would not, in fact, cause any  
6 new violations of the state PM10 standard.

7           In testimony that you heard yesterday  
8 from Mr. Weatherwax, which I'll discuss a little  
9 bit more, Mr. Weatherwax concluded somewhat to the  
10 contrary that the Otay Mesa project could cause  
11 additional curtailments of natural gas or  
12 increased severity of existing curtailments.

13           Going back to the PM10 analogy, the  
14 Commission Staff concluded that even though there  
15 was not a new violation of the PM10 standard  
16 attributable to the Otay Mesa project, nonetheless  
17 the staff concluded that the impacts were  
18 significant.

19           And through my testimony I believe I  
20 will show that in the case of curtailment that  
21 similarly an increased likelihood of curtailment  
22 will result in significant air quality impacts.

23           The conclusion here is that just because  
24 there is an existing condition, whether it is  
25 existing violations of the state PM10 standard, or

1 existing gas supply restrictions that lead to gas  
2 curtailments, just because there's an existing  
3 condition does not mean that you can ignore the  
4 incremental impacts of this project.

5 Next let me turn to the issue  
6 specifically addressed in my written testimony  
7 which is what is the effect of curtailment on air  
8 emissions in the region.

9 I believe Mr. Ogata yesterday afternoon  
10 indicated that the staff had a great deal of  
11 difficulty trying to define what kind of a  
12 scenario to analyze because there were so many  
13 variables. I'm quite sympathetic to that, I  
14 struggled with exactly the same problem.

15 Ultimately what I chose to do is to  
16 bifurcate the analysis. My testimony in writing  
17 did not attempt to determine what the increase in  
18 frequency would be or what the increase in extent  
19 of curtailments would be.

20 Rather I specifically answered the  
21 question, what are the increases in emissions  
22 associated with the curtailment of one day of  
23 various degrees. And I selected, just to present  
24 to the Committee, a range of curtailment  
25 scenarios.

1           A 10 percent curtailment scenario,  
2       meaning 10 percent of the heat input to the two  
3       plants would have to be replaced with fuel oil. A  
4       20 percent curtailment scenario; a 50 percent  
5       curtailment scenario; and a 100 percent  
6       curtailment scenario.

7           Again, in saying that I'm not commenting  
8       at this point on the likelihood of any one of  
9       these scenarios occurring; I'm simply presenting  
10      the air emissions impacts associated with those  
11      scenarios.

12           The assumptions that I used in  
13      developing those scenarios are presented on pages  
14      7 and 8 of my testimony. The detail emission  
15      calculations are presented on pages 9 through 13.

16           And if you look, for example, at page 14  
17      of my testimony is a bar chart. And what this  
18      chart shows is the emissions from the Encina and  
19      South Bay Power Plants, and how those emissions,  
20      in particular of ozone precursors, hydrocarbons  
21      and NOx, would be affected by various degrees of  
22      curtailment.

23           Remember in looking at these analyses  
24      I'm looking at a single day's curtailment, 24  
25      hours.

1                   And what you can see is that in the  
2           extreme case where a full curtailment occurs, that  
3           the increased emissions on that single day  
4           represent the difference between roughly 22,000  
5           pounds and 8000 pounds, for a difference of 14,000  
6           pounds, or 7 tons of emissions in one day. This  
7           Commission is used to dealing with emissions  
8           presented in tons per year.

9                   If you take a look at the next page,  
10          which looks at PM10 precursors, one thing I have  
11          to caution you about is that the scale on the  
12          left-hand side of the bar chart, this is on page  
13          15, is ten times higher. It goes up to 250,000  
14          pounds.

15                  And a single day's curtailment, full  
16          curtailment at both power plants would result in  
17          an increase in emissions of PM10 precursors, as  
18          you can see, the difference between roughly  
19          230,000 pounds and about 10,000 pounds.

20                  HEARING OFFICER GEFTER: Sorry to  
21          interrupt your direct, but a quick question with  
22          respect to the caps. With these scenarios that  
23          you're presenting in these tables, would these  
24          scenarios occur under the caps that have been  
25          established in the rule 69?

1           MR. RUBENSTEIN: The caps only affect  
2           one pollutant, oxides of nitrogen emissions. And  
3           my analysis looked at all pollutants.

4           The caps would have no impact on this on  
5           any individual day because the caps are annual  
6           caps.

7           Concluding what I was going to say about  
8           the figure on page 15, the increase in emissions  
9           total PM10 precursors for one day's curtailment of  
10          both facilities would be over 100 tons in one day.

11          Having set that out, though, that  
12          doesn't really provide you with a frame of  
13          reference to evaluate what the probability is of  
14          any of these different levels of curtailment.  
15          Obviously the impacts are much smaller if a  
16          curtailment is less.

17          We have the ability, regrettably, to  
18          look at the events of last week and try to place  
19          that into some perspective.

20          I spoke with operators at both the  
21          Encina and South Bay Power Plants to learn exactly  
22          how much fuel oil those plants burned during last  
23          week's curtailments.

24          The South Bay Power Plant burned  
25          approximately 13,000 barrels of number 6 oil last

1 week. And the Encina Power Plant burned over  
2 16,000 barrels of oil.

3 COMMISSIONER PERNELL: How long is that  
4 in relationship to time?

5 MR. RUBENSTEIN: That was over a period  
6 of approximately five days. Monday through Friday  
7 with the curtailments operating --

8 COMMISSIONER PERNELL: At 24 hours a  
9 day?

10 MR. RUBENSTEIN: No, varying degrees of  
11 operation. This is how much they actually burned.  
12 The curtailments occurred for the Encina plant for  
13 two or three days last week; and for the South Bay  
14 plant two or three days last week. And there was  
15 not a complete overlap.

16 COMMISSIONER PERNELL: In your scenario  
17 you're saying 24 hours a day and coming up with  
18 the, on your chart here on page 14 --

19 MR. RUBENSTEIN: My hypothetical  
20 scenarios are all based on 24 hours, that's  
21 correct.

22 COMMISSIONER PERNELL: Right, and I  
23 guess my question is, either to you or the Air  
24 District, is that the norm, that there would be a  
25 24 hour a day curtailment burning of fuel oil?



1                   MR. RUBENSTEIN: I can answer that  
2                   question with respect to last week's curtailments,  
3                   each of the facilities was curtailed for a period  
4                   of at least 20, and in some cases 24 hours.

5                   The curtailments were not short. They  
6                   were not a matter of minutes or a few hours. They  
7                   were extensive.

8                   Again, looking at the two totals for the  
9                   two plants, there was, as I said, a total of  
10                  approximately 30,000 barrels of number six oil  
11                  burned at those two plants last week.

12                  Converting from barrels to gallons, so  
13                  that you can then compare with the summary table  
14                  that I have on page 13 of my testimony, the total  
15                  amount of fuel oil burned at the two plants is  
16                  approximately 1250-thousand gallons, 1.25 million  
17                  gallons of number six oil.

18                  That was spread out in a rather uneven  
19                  manner over a period of five days, Monday through  
20                  Friday. On average last week 250,000 gallons of  
21                  fuel oil were burned at each of -- at the total  
22                  for the two plants.

23                  If you take a look at the table on page  
24                  13 of my testimony, and if you go to the bottom  
25                  part of the table where it says incremental daily

1 emissions compared with basecase. And then if you  
2 next look at the column entitled oil use in  
3 thousands of gallons, you will see that the 10  
4 percent curtailment case is equivalent to  
5 approximately 237,000 gallons of oil in a 24-hour  
6 period.

7           Consequently, what we saw last week was  
8 the scenario that I had developed as a 10 percent  
9 curtailment scenario and it persisted for five  
10 days.

11           And that's, again, just to put into  
12 perspective my hypothetical scenarios and compare  
13 them with what actually happened here in San Diego  
14 last week.

15           Let's explore further what that meant in  
16 terms of air emissions in San Diego. Going across  
17 the remainder of that line at the bottom of the  
18 table, the line for the 10 percent curtailment,  
19 and then going to convert from pounds per day into  
20 tons so we have some smaller numbers to deal with,  
21 on each day that that curtailment persisted we had  
22 increases in emissions of approximately .4 tons  
23 per day of NOx, 1 ton per day of particulates, and  
24 9 tons per day of SOx.

25           Now, let me clarify that for a moment.

1 I just said that's the increases we actually had  
2 last week. That's not quite correct. For  
3 purposes of my analysis, which was looking forward  
4 at the year 2003 when the Otay Mesa plant would be  
5 on line, I assumed that there were more advanced  
6 emission controls installed at both Encina and at  
7 South Bay, as required by the variances you just  
8 heard discussed.

9 And in particular I assumed that Encina  
10 Units four and five had full SCR retrofits  
11 completed. That South Bay Units one, two and  
12 three had full SCR retrofits completed, and South  
13 Bay Unit four had a partial SCR retrofit  
14 completed.

15 And so the emissions increases that I'm  
16 talking about here take into account the more  
17 advanced emission controls that are going to be  
18 installed in those facilities over the next two  
19 years.

20 But if the events of last week were to  
21 recur in 2003, the increases would be on each day  
22 of the five-day event, 9 tons per day of SOx, one  
23 ton per day of PM10, and .4 tons per day of NOx.

24 The total for the one week event, and it  
25 was just a single event that was scattered over

1 the five days, is 45 tons of SOx, 5 tons of  
2 particulate and 2 tons of NOx, or for a total of  
3 all the PM10 precursors of 52 tons.

4 What does that mean? You heard  
5 discussions this morning about how do you decide  
6 whether an impact is significant or not. One way  
7 you can evaluate that is by taking a look at past  
8 Commission decisions.

9 And most specifically what I took a look  
10 at was the recent decision by this Commission to  
11 approve the Moss Landing project.

12 In approving that project the Commission  
13 Staff and the Committee and the Commission  
14 concluded that the combustion emissions associated  
15 with the construction of that project represented  
16 a significant air quality impact that required  
17 mitigation.

18 The construction emissions from the Moss  
19 Landing project consisted of approximately 38 tons  
20 per year of NOx, 2.5 tons per year of  
21 particulates, and one ton per year of SOx, for a  
22 total of 41 tons per year of PM10 precursors.  
23 That 41 ton per year impact was deemed significant  
24 by the Commission.

25 A one-week curtailment like the one we

1 had last week, if it occurs in the future with new  
2 emission controls on the Encina and South Bay  
3 units, would generate 52 tons. One week.

4 HEARING OFFICER GEFTER: You're talking  
5 52 tons of all pollutants?

6 MR. GOLDMAN: Of all of the PM10  
7 precursors.

8 HEARING OFFICER GEFTER: PM10  
9 precursors, and with the Air District's cap on  
10 these projects, and the cap apparently will become  
11 lower by the year 2003, and you indicated the cap  
12 was for NOx.

13 MR. RUBENSTEIN: That's correct.

14 HEARING OFFICER GEFTER: But even if the  
15 cap is -- please explain that.

16 MR. RUBENSTEIN: Sure.

17 HEARING OFFICER GEFTER: Even if there  
18 is a cap on NOx, it would mean that the fuel oil  
19 can't be burned and produce the other precursors  
20 because it would produce NOx above the cap limits?

21 MR. GOLDMAN: No, it would not produce  
22 NOx above the cap limits.

23 The analysis that I did indicated that a  
24 one-week curtailment like we had last week would  
25 generate only two tons of excess NOx. And with a

1 total cap for the two facilities on the order of  
2 800 tons, the 2 ton increase in NOx would not be  
3 determinative.

4 Those plants could continue to comply  
5 with the cap, and you would have significant  
6 increases, and those increases largely come from  
7 direct particulate emissions and from sulfur  
8 dioxide emissions.

9 To put it into another perspective, you  
10 heard discussions yesterday about disagreements  
11 about how large a curtailment one could  
12 anticipate.

13 Looking again at the table I have on  
14 page 13 and looking at the 10 percent curtailment  
15 line, the scenario we're looking at, the analyses  
16 that I was doing showed roughly a 237,000 gallon  
17 fuel oil use for a single day, and a gas  
18 curtailment of 35 million cubic feet.

19 And remember, yesterday you heard  
20 discussions about whether the correct number was  
21 360 or 290 or 200. We're talking about very  
22 significant impacts from much lower levels of  
23 curtailment than you heard discussed yesterday.

24 The next question that I believe the  
25 Commission has to look at is what is the

1       likelihood. Is it reasonably foreseeable that  
2       operation of the Otay Mesa project will cause  
3       increases in either the frequency or the severity  
4       of curtailments. And as I've shown, even a small  
5       increase produces a significant impact.

6               One issue that you heard discussed  
7       yesterday that could lead to the increased  
8       frequency and severity of curtailments was in Bob  
9       Weatherwax's testimony where he discussed very  
10      specifically the gas supply constraint, and how he  
11      believes that that constraint could lead to  
12      increased curtailments. And in particular I'm  
13      referring to the discussion on page 8 of his  
14      testimony.

15             In addition you heard a more passing  
16      discussion to an impact that I believe may be even  
17      more significant which has to do with transmission  
18      constraints.

19             And here I'm referring to the discussion  
20      on page 5 of Mr. Weatherwax's testimony in which  
21      he indicated that in order for the Otay Mesa plant  
22      to operate at 510 megawatts, its rated capacity,  
23      given the current transmission constraints in San  
24      Diego, the Encina plant would have to generate at  
25      least 230 megawatts. And the South Bay plant

1 would have to generate at least 630 megawatts.

2 I took a look at actual hour-by-hour  
3 operating data from each unit at the two plants  
4 for the month of July of this year.

5 As we all know, July was a pretty severe  
6 test for the power generation system in  
7 California. This whole summer has. And one would  
8 expect that Encina and South Bay plants would have  
9 been dispatched pretty heavily throughout that  
10 entire month, and so this kind of a minimum  
11 generation constraint would not have produced a  
12 significant impact.

13 In fact, I found that in July there were  
14 152 hours where the Encina load total was less  
15 than 230 megawatts, and that's it would have had  
16 to generate additional power just in order to  
17 allow Otay Mesa to reach its 510 megawatt  
18 capacity.

19 Over the course of the entire month, the  
20 month of July, Encina would have had to generate  
21 over 10,000 megawatt hours of additional power.

22 Taking a look further at where the  
23 generation occurred, it was principally at night,  
24 where the loads had dropped off and the Encina  
25 plant had backed off to lower loads.



1                   However, the Otay Mesa plant, being a  
2                   more efficient plant, might very well have been in  
3                   the market at full capacity during the night. And  
4                   were that the case, it would have forced the  
5                   Encina plant to run more to maintain system  
6                   reliability.

7                   The situation at South Bay was even  
8                   worse. Again, based on Mr. Weatherwax's  
9                   testimony, he concluded that South Bay would have  
10                  to operate at a minimum load of 630 megawatts to  
11                  support full load generation at Otay Mesa.

12                  During the month of July 2000 when the  
13                  South Bay plant was running quite a bit, I found  
14                  687 hours where the generation was less than 630,  
15                  and thus additional generation would have been  
16                  required to make up the difference.

17                  MR. CARROLL: Excuse me, I apologize for  
18                  interrupting, and I recognize that the intervenor  
19                  has wide latitude in their direct testimony.

20                  But in the last two or three minutes are  
21                  not related to air quality at all. They're  
22                  transmission issues. And I guess I'm a little  
23                  confused --

24                  MR. RUBENSTEIN: I will get to an  
25                  emission number in about two minutes.

1 HEARING OFFICER GEFTER: Well, --

2 MR. CARROLL: Well, lacking a foundation

3 I --

4 MR. VARANINI: I think that the process  
5 really is prefatory in the sense that instead of  
6 having me play pitch and catch, essentially what's  
7 going on is that in a much more competent and  
8 coherent way the witness is basically providing  
9 the foundation for where he's going and how he  
10 arrived at his conclusions.

11 It seems to us that we listen carefully  
12 to the admonition of the Hearing Officer and the  
13 Presiding Member to try to let our witnesses go on  
14 and give you a coherent picture, and then be taken  
15 apart, if they can, by the other lawyers.

16 I think, as well, we thought very hard  
17 last night about the Commissioner's direction.  
18 And I think an awful lot of work went into that  
19 direction. And when Mr. Rubenstein completes his  
20 testimony and completes the cross, we're going to  
21 make an offer of proof to try to tie all these  
22 things in and give essentially a direct answer to  
23 that XYZ directive.

24 But, in any event, I think these are  
25 just foundational matters just like the staff

1 witness; in order to do an air analysis, Mr.  
2 Rubenstein has to rely on inputs, and he's telling  
3 you what those inputs are. And he's not  
4 testifying independently or trying to be a triple  
5 threat. He's just a single vicious threat.

6 And essentially what he's going to do is  
7 to get to the point, lay out why this is a  
8 significant impact, and what we ought to do about  
9 it.

10 MR. CARROLL: I don't have any problem  
11 with the witness providing a comprehensive  
12 picture. I'm not suggesting this needs to be  
13 question and answer, but at the same time the  
14 witness is only competent to testify within his  
15 area of expertise.

16 And I disagree that he is building upon  
17 what Mr. Weatherwax said. In fact, he is  
18 providing us his own independent analysis on the  
19 electric transmission issues.

20 HEARING OFFICER GEFTER: I tend to agree  
21 with what Mr. Carroll is saying. I would admonish  
22 the witness to stick with your area of expertise,  
23 which is air quality.

24 I've been listening to you also the last  
25 several minutes, and you've been talking about the

1 amount of generation both Encina and Duke would  
2 have been required to produce if Otay were on  
3 line.

4 That was not part of your analysis. And  
5 I would just request that you stick with your air  
6 quality analysis.

7 MR. VARANINI: Ma'am, the --

8 HEARING OFFICER GEFTER: The conclusions  
9 that Mr. Varanini says that you're getting to, we  
10 would hear those.

11 MS. DUNCAN: May I ask a question for  
12 clarification?

13 HEARING OFFICER GEFTER: All right.

14 MS. DUNCAN: In staff's analysis Matt  
15 said he relied on Mr. Wood's analysis. Isn't that  
16 what's going on here?

17 MR. CARROLL: No. I don't have any  
18 problem with his relying on Mr. Weatherwax's  
19 analysis to the extent there was any, but he is  
20 stating his own analysis.

21 MS. DUNCAN: But that's his testimony,  
22 isn't it?

23 MR. CARROLL: Yes, but it's outside of  
24 his area of expertise.

25 HEARING OFFICER GEFTER: All right,

1 we've already ruled, and we've asked Mr.  
2 Rubenstein to continue and stick with your  
3 testimony with respect to air quality.

4 MR. GOLDMAN: I will, Ms. Gefter. Let  
5 me just also point out that the data that I looked  
6 at are data that we had collected at the request  
7 of the Air District several months ago in  
8 addressing issues related to rule 69.

9 We analyzed the data answering a  
10 different question for the Air District. And so I  
11 believe I am competent to look at the data here.

12 The bottomline that I was getting to is  
13 that if Mr. Weatherwax was correct in that there  
14 is a minimum generation requirement associated  
15 with the Otay Mesa plant that impacts operations  
16 at Encina and South Bay; and assuming that all of  
17 the extra generation at those plants comes from  
18 units equipped with selective catalytic reduction,  
19 the increase in NOx emissions in July of this year  
20 would have been nearly 18 tons of NOx.

21 And on an annual basis -- remember I  
22 said earlier that I believed July would have been  
23 a worst case, a minimum impact, the minimum  
24 increase in emissions would be over 200 tons per  
25 year of NOx due to the transmission constraint, if

1 Mr. Weatherwax's conclusions were correct.

2           Consequently, I believe that if there is  
3 an increase in curtailment of natural gas supplies  
4 that is reasonably foreseeable, and if the impacts  
5 are comparable from that increase to what we  
6 actually experienced last week, and if that occurs  
7 for only a couple of years until the transmission  
8 and gas supply constraints are relieved, you have  
9 a situation that in terms of emissions impacts is  
10 exactly comparable to other situations this  
11 Commission has concluded represent significant air  
12 quality impacts.

13           And if the impacts are significant what  
14 do you need to do? I believe you need to find  
15 mitigation for those impacts.

16           And that mitigation could be in the form  
17 of prohibiting either the construction or  
18 operation of the Otay Mesa Power Plant until a  
19 demonstration is made that there are no gas supply  
20 constraints as of the date the project begins  
21 operating based on fully approved projects that  
22 would affect operations at Encina or South Bay.

23           And similarly, that there are no  
24 transmission constraints that would require  
25 increased generation at the Encina and South Bay

1 plants to support Otay Mesa.

2 That concludes my direct testimony.

3 EXAMINATION

4 BY HEARING OFFICER GEFTER:

5 Q In the absence of Otay Mesa what would  
6 you propose to mitigate this output of the Encina  
7 and South Bay plants, if there were no Otay Mesa?

8 MR. RUBENSTEIN: If there were no Otay  
9 Mesa project, with all due respect, I wouldn't be  
10 sitting here, because this Commission wouldn't be  
11 here considering the case.

12 The retrofit of the units with SCR; the  
13 preferential dispatch of those units that have the  
14 best controls to use oil. It would be all  
15 mitigation measures that I would recommend to, for  
16 example, the Air District if they were considering  
17 some kind of a proceeding that required them to  
18 look at this issue.

19 HEARING OFFICER GEFTER: Have you  
20 already recommended those mitigation measures to  
21 the Air District?

22 MR. RUBENSTEIN: The retrofit of the  
23 units with SCR I've already recommended to my  
24 clients, and they're proceeding with those.

25 COMMISSIONER PERNELL: The assumptions

1       that you've given us was based on existing  
2       conditions, in other words Otay Mesa wasn't  
3       factored into any of these charts?

4               MR. RUBENSTEIN:  My charts were all  
5       hypothetical charts of different curtailment  
6       scenarios because I'm not qualified to tell you  
7       whether a curtailment is going to occur or not.

8               COMMISSIONER PERNELL:  All right, then  
9       in your hypothetical was Otay Mesa included?

10              MR. RUBENSTEIN:  I did not need to  
11       decide whether Otay Mesa was included or not.  If  
12       there was a curtailment for any reason of the  
13       magnitudes I estimated those would be the  
14       emissions impacts.

15              If a curtailment of one day, for  
16       example, occurred, one additional day occurred due  
17       to Otay Mesa, and that was at the 10 percent  
18       curtailment level, then my estimate is that there  
19       would be an extra ten tons of emissions on that  
20       one day.

21              COMMISSIONER PERNELL:  Right, so it  
22       sounds like it wasn't predicated on whether Otay  
23       Mesa exists or not, just on curtailment?

24              MR. RUBENSTEIN:  My testimony is based  
25       on that, right.  It's for the Commission to decide



1       whether Otay Mesa, based on other testimony you've  
2       heard, whether Otay Mesa could cause that kind of  
3       a curtailment. I can't reach that conclusion --

4               COMMISSIONER PERNELL: And then it went  
5       out to '03?

6               MR. RUBENSTEIN: I looked, for purposes  
7       of my analysis I looked at what the emissions  
8       impacts would be in 2003, because that's the first  
9       year that there could be any interaction between  
10      Otay Mesa and the Encina and South Bay plants.

11              COMMISSIONER PERNELL: And then just a  
12      final question that I didn't hear. Maybe I  
13      shouldn't ask this, but there wasn't any analysis  
14      on whether there would be any additional supply of  
15      natural gas between now and '03?

16              MR. RUBENSTEIN: No, because again I'm  
17      not competent to answer the question about whether  
18      there will be any additional gas supplies, or how  
19      specifically they might affect gas availability to  
20      Encina and South Bay. That was in the testimony  
21      of Mr. Weatherwax.

22              COMMISSIONER PERNELL: Thank you.

23              MR. VARANINI: We have some rebuttal  
24      testimony from Mr. Rubenstein to Mr. Caldwell, and  
25      I don't know when that's appropriate to take that

1 up. Whether the applicant's going to call Mr.  
2 Caldwell or not.

3 And then secondly, should we have a  
4 response now, or wait until Mr. Caldwell's  
5 testimony has gone on.

6 HEARING OFFICER GEFTER: Is the  
7 applicant planning to call Mr. Caldwell, yes?  
8 Okay, after Mr. Caldwell is called, then perhaps  
9 you can ask Mr. Rubenstein to come back in  
10 rebuttal.

11 MR. VARANINI: Thank you.

12 HEARING OFFICER GEFTER: At this point,  
13 does staff have cross-examination of Mr.  
14 Rubenstein?

15 MR. OGATA: Yes, we just have a couple  
16 of questions.

17 CROSS-EXAMINATION

18 BY MR. OGATA:

19 Q Mr. Rubenstein, with respect to the  
20 emissions last week from Cabrillo and Encina, or  
21 South Bay, were those emissions -- are those  
22 emissions already covered by existing permits?

23 A Yes, all of the emissions that occurred  
24 last week were within applicable permits.

25 Q As I understand your testimony, you said

1       that those emissions were equivalent to your 10  
2       percent curtailment scenario, is that right?

3           A     That's correct.

4           Q     And do you know if those emissions  
5       caused any air quality violations?

6           A     I do not.

7                   MR. OGATA:  Thank you, that's all the  
8       questions I have.

9                   HEARING OFFICER GEFTER:  Applicant.

10                  MR. CARROLL:  Thank you.

11                               CROSS-EXAMINATION

12       BY MR. CARROLL:

13           Q     Mr. Rubenstein, thank you for that very  
14       complete explanation of your testimony on the air  
15       quality findings that you reached.  Actually  
16       answered many of the questions that I had  
17       regarding the foundation for your assumptions.

18                   But I do have some remaining questions.  
19       And point of clarification, I think you testified  
20       a couple of times, including just near the end of  
21       your comments, that you were not qualified to make  
22       any predictions about whether or not there would  
23       be additional curtailments and what the extent of  
24       those might be.

25                   And I just wanted to clarify because

1       there was a statement on page 3 of your written  
2       testimony which states that, it's the first  
3       paragraph under the heading of summary, that the  
4       potential for future gas curtailments at the  
5       Encina and South Bay power plants are a real  
6       possibility.

7               So, to me that statement seems somewhat  
8       contradictory to a number of statements you made  
9       in your verbal testimony.

10              I wanted to clarify. Are you making any  
11       predictions regarding the likelihood or the  
12       magnitude of future curtailments?

13              A     I believe that would be accurately  
14       characterized as a lay conclusion. I looked at  
15       what happened last week, and without having any  
16       expertise in this area, concluded that the events  
17       could repeat itself.

18              That's the extent of my conclusion.

19              Q     Okay. And similarly, the 10 percent, 20  
20       percent, 50 percent and 100 percent scenarios are  
21       simply scenarios that you chose for purposes of  
22       analysis and don't have any relationship to actual  
23       quantitative analysis that would lead one to  
24       conclude that those are reasonable scenarios,  
25       likely scenarios, possible scenarios?

1           A     Well, actually based on my discussions  
2     with the plant staff of what happened last week  
3     for, I believe, at least the South Bay plant,  
4     there was a 100 percent curtailment for, I  
5     believe, 20 hours.

6                     So I think that the events of last week  
7     indicate that the entire range that I looked at  
8     is, in fact, possible. But it does not indicate  
9     the extent to which that may happen in the future.

10           Q     Those curtailments obviously occurred  
11     under a very different set of circumstances than  
12     would exist with the Otay Mesa power plant on  
13     line, would you agree?

14                     MR. VARANINI: I'd object that that  
15     calls for a -- it's a speculative question.

16                     HEARING OFFICER GEFTER: Yeah, objection  
17     sustained.

18     BY MR. CARROLL:

19           Q     In your direct written testimony, I  
20     think you answered this question but let me  
21     clarify. With respect to the scenarios that you  
22     assumed, you assumed that those would occur over a  
23     24 hour period of time?

24           A     That's correct.

25           Q     Okay. There is a statement in your

1 written testimony, you alluded to it as well in  
2 your verbal testimony. It's in the second  
3 paragraph under summary.

4 Where it states, in essence, that you  
5 assumed the planned retrofits at the Encina and  
6 South Bay facilities. Am I correct that that's --

7 A That's correct.

8 Q -- you did assume those? When I look at  
9 page 8 of your written testimony and the  
10 footnotes, and specifically at footnote 17, which  
11 is the reference to the NOx emissions that you  
12 assumed would occur, as I understand it you based  
13 your NOx calculations on the applicable or at  
14 least the most recently proposed limits in rule  
15 69, is that correct?

16 A Yeah, and emphasis on the word proposed,  
17 the most recent proposal by the District Staff for  
18 amendments to rule 69.

19 Q So in fact your calculations didn't  
20 assume emissions, actual emissions with the  
21 installation of controls, they assumed maximum  
22 allowable emissions under the rule?

23 A I think the answer is partially yes,  
24 partially no, if I could explain. We did assume  
25 full SCR retrofits and emission limits of .15

1       pounds per megawatt hour for five of the nine  
2       units at the two facilities.

3               And based on my understanding of the  
4       design of the SCR control systems of those  
5       facilities, the actual emissions will be within  
6       roughly 10 percent of those limits.

7               With respect to the other units that  
8       will not have full SCR installations, my estimates  
9       are based on the District's limits which in turn  
10      are based on the District's estimates of what  
11      emission levels can be achieved.

12              Consequently I don't expect those limits  
13      would be substantially higher than actual  
14      emissions, either. Probably again about 10  
15      percent, just as for the Otay Mesa plant.  
16      Emissions will be below on a consistent basis, but  
17      not exactly up to the permit limits.

18              So my judgment is that for NOx emissions  
19      in particular, my estimates are probably within 10  
20      to 15 percent.

21              Q     Okay, so your testimony now is that  
22      these aren't really the emissions that would  
23      result assuming installation of all the controls,  
24      but they're pretty close in your opinion, is  
25      that --

1           A     With respect to NOx.

2           MR. VARANINI: I want to object, he's  
3     mischaracterizing the testimony. And I think the  
4     implications are not consistent with what, in  
5     fact, he testified to and what, in fact, he wrote.

6           MR. CARROLL: There's a direct  
7     contradiction within the written testimony between  
8     how the emissions were calculated. I'm just  
9     trying to clarify what the correct answer is.

10          HEARING OFFICER GEFTER: Ask that  
11     question that way. See if he has an answer for  
12     you.

13     BY MR. CARROLL:

14          Q     Am I correct that your testimony is that  
15     the emissions were calculated consistent with  
16     footnote 17 as opposed to the statement on page 3?

17          A     I guess I don't see the inconsistency  
18     between the two. I did assume that all currently  
19     planned retrofits of emission controls proceeded  
20     on schedule. And the specific numbers that I used  
21     are outlined in footnote 17.

22          Q     Okay, but the emission calculations are  
23     based on the maximum allowable under the rule as  
24     opposed to what you would anticipate the emissions  
25     to be assuming installation of the controls?



1           A     I don't see that as an inconsistency.

2           They were based on the expected --

3           Q     Well, is it just a true statement?

4           MR. VARANINI:  I object, asked and  
5           answered.  It seems to me what the answer was was  
6           that for regulatory purposes they used one number  
7           consistently.  And then for purposes of what may  
8           happen on the ground, you would expect that that  
9           worst case regulatory number would be, from time  
10          to time, less -- around a 10 percent minus value.  
11          That's what I heard.

12          HEARING OFFICER GEFTER:  Okay, well, it  
13          seems to me that both counsel can argue the point  
14          in their briefs.  Let's move on, Mr. Carroll.

15          MR. CARROLL:  Thank you.

16          MR. RUBENSTEIN:  And I'd point out that  
17          that footnote only refers to NOx emissions.

18          BY MR. CARROLL:

19          Q     On page 4 of your written testimony,  
20          it's the last paragraph, larger paragraph on the  
21          page.  The second sentence refers to -- it states:  
22          In my recent experience the Commission has  
23          required mitigation for a variety of foreseeable,  
24          significant, short-term impacts, and then it goes  
25          on.

1                   What did you mean by short term in this  
2                   context?

3                   A     The specific example that I gave during  
4                   my oral testimony today was the construction of  
5                   the Moss Landing Power Plant which was an impact  
6                   that's expected to last not more than 30 months.

7                   Q     Are you familiar with the prehearing  
8                   conference statement that was filed by Cabrillo in  
9                   this matter?

10                  A     Yes, I am.

11                  Q     Do you have a copy of that with you?

12                  A     I do if you can give me a minute to get  
13                  it in front of me.

14                               (Pause.)

15                  MR. RUBENSTEIN: I have it in front of  
16                  me now.

17                  BY MR. CARROLL:

18                  Q     Thank you. Are you also familiar with  
19                  appendix B to one of the final staff assessment  
20                  that was prepared by Mr. Layton from the CEC  
21                  Staff?

22                  A     I believe I am, but I keep having  
23                  trouble finding that appendix. I find it and I  
24                  lose it. That is in -- oh, it's in volume one?

25                  Q     Part one, that's correct.

1           A     Yes, I have that in front of me.

2           Q     Thank you. In Cabrillo's prehearing  
3 conference statement there are a number of places  
4 where the distinctions between fuel oil and  
5 residual oil are drawn.

6                     For example, page three under the  
7 heading overview, the second paragraph includes  
8 some discussion of this issue. Could you please  
9 explain for me the difference between fuel oil and  
10 residual oil?

11          A     Fuel oil is a generic term that I  
12 believe includes items such as number six fuel  
13 oil, number two fuel oil, residual fuel oil, and  
14 potentially bunker fuel.

15          Q     Thank you. What sulfur content fuel did  
16 you use to generate the numbers contained in the  
17 tables in your written testimony?

18                     I can help you, it's footnote 14. Do  
19 you recall using .5 percent sulfur as the sulfur  
20 content of the fuel in your analysis?

21          A     Yes, I do.

22          Q     And do you know what sulfur content Mr.  
23 Layton used in his analysis contained in appendix  
24 B?

25          A     I believe Mr. Layton used .5 percent

1 sulfur as well.

2 Q Okay, so Mr. Layton's analysis and your  
3 analysis are consistent in that respect?

4 A Yes.

5 Q Can you tell me if you know what the  
6 sulfur content of fuel oil typically available in  
7 southern California is?

8 A Actually I asked that question yesterday  
9 of the purchasing manager for the South Bay Power  
10 Plant, who has found himself in the position of  
11 suddenly having to buy fuel oil that he didn't  
12 expect to have to buy.

13 He indicated that he was having some  
14 amount of difficulty locating fuel with a sulfur  
15 content of anything less than .5 percent. And he  
16 indicated specifically that he had no sources who  
17 indicated an ability to provide anything as low as  
18 .25 percent.

19 Q Did you consider in your analysis the  
20 burning of any cleaner fuels than those with .5  
21 percent sulfur content?

22 A It's not my understanding that there are  
23 any number six fuel oils available with a sulfur  
24 content significantly below .5 percent.

25 The actual sulfur content of the fuels

1 currently in the tanks at Encina and South Bay, as  
2 reported to me by the plant staff of the two  
3 plants is between .4 and .5 percent.

4 And with respect to the burning of a  
5 distillate fuel, which would be, in theory, the  
6 next most logical fuel to burn, I confirmed that  
7 major modifications of both the fuel handling  
8 system and the burners at each of the two plants  
9 would be required in order to burn distillate fuel  
10 and potentially permit applications for  
11 modifications to burn distillate fuel would have  
12 to be submitted to the Air District.

13 So, because of that I did not consider  
14 the possibility that other cleaner burning fuels  
15 would be combusted in my analysis.

16 Q Just so I understand your testimony is  
17 it would not be possible to burn cleaner fuels at  
18 Encina and South Bay plants as a backup fuel.

19 A It would not be possible without  
20 substantial investments and substantial time.

21 MR. CARROLL: Excuse me just a moment.  
22 There were a number of questions that I had for  
23 you that have been answered by the District and I  
24 don't want to waste time repeating, if you'll just  
25 bear with me for a moment.

1 (Pause.)

2 BY MR. CARROLL:

3 Q I'd like to draw your attention to  
4 what's been marked as exhibit 89, which is the  
5 emergency motion of Dynegy Marketing and Trading  
6 for immediate modification and clarification of  
7 SDG&E's gas rule 14.

8 Do you have a copy of that document, do  
9 you know?

10 A I believe I do. Yes, I have that in  
11 front of me now.

12 Q You are, I take it, familiar with the  
13 permits applicable to the units at the Encina and  
14 South Bay facilities?

15 A Yes, I am.

16 Q Turning to page 12 of exhibit 89, under  
17 the heading, the need for immediate action, the  
18 second paragraph, first sentences reads: As  
19 discussed in footnote 5 under rules and  
20 interpretations of San Diego Air Pollution Control  
21 District, Dynegy would not have the option of  
22 burning oil at the San Diego plants after December  
23 31 of this year.

24 In your opinion, is that a true  
25 statement?

1           A     If that statement were presented to me  
2     on a blank sheet of paper, I would say no. But,  
3     two sentences down in the same paragraph it  
4     states: Had this week's curtailment occurred on  
5     or after January 1, 2001, both Dynegy and Dena  
6     would have had no choice but to shut down those  
7     generating units because of their inability to  
8     burn oil without a force majeure exemption from  
9     the emissions allowance cap.

10           I would actually modify that second  
11     sentence to indicate without a force majeure  
12     exemption from the permit condition.

13           But in any event I believe that sentence  
14     clarifies the meaning of the first sentence, and I  
15     believe the paragraph as a whole is correct.

16           Q     Let me make sure I understand your  
17     answer. So the first sentence is true, post  
18     January 1, 2001?

19           A     No, that's not what I said. I said that  
20     the first sentence, when read in the context of  
21     the third sentence, indicates that the paragraph,  
22     as a whole, is correct.

23           But if I were to take the first sentence  
24     out of context I would not agree with it.

25           HEARING OFFICER GEFTER: Mr. Carroll,

1 the District testified earlier as to when Duke and  
2 Encina were allowed to burn fuel oil. And it's  
3 the Committee's understanding at this point, and  
4 the District can let us know if this is accurate,  
5 that after January 1, 2001, both projects cannot  
6 burn fuel oil except in the case of a force  
7 majeure event.

8 MR. MOORE: That's correct.

9 HEARING OFFICER GEFTER: Thank you.

10 MR. MOORE: With some allowance for  
11 testing.

12 MR. CARROLL: I appreciate that. It's  
13 just been a point of some confusion and I wanted  
14 to attempt to clarify it through the witnesses for  
15 the intervenors.

16 PRESIDING MEMBER LAURIE: We appreciate  
17 that.

18 BY MR. CARROLL:

19 Q Are you familiar with the variances from  
20 rule 69 issued to Encina and South Bay facilities  
21 on October 14th of 1999 and November 16th of 2000,  
22 respectively?

23 A Yes, actually the final variance for the  
24 Encina plant was issued or reissued, if you will,  
25 in February of 2000. But, yes, I'm familiar with



1       those.

2           Q     And what was your role with respect to  
3       those variances?  Are you familiar as an outside  
4       observer or were you involved in those variances  
5       in some way?

6           A     In the case of the Encina variance  
7       proceeding, the variance petition was prepared  
8       under my supervision in consulting with the client  
9       and their attorneys.  I participated in presenting  
10      the case before the Hearing Board.

11                In the case of the South Bay variance  
12      proceeding, I was a reviewer and a participant of  
13      the process.

14           Q     There's been a package marked as exhibit  
15      86 which includes a number of documents related to  
16      the variance for Duke Energy South Bay.  Do you  
17      have a copy of that?

18           A     Are those the materials that were  
19      attached to the testimony of Mr. Caldwell?

20           Q     Yes, they are.

21           A     Yes, I believe I do.

22           Q     Thank you.  If you could turn to page 4  
23      of the petition for variance, which is the second  
24      document, and there's a cover letter from the  
25      District Staff; the second document is the

1 petition for variance.

2 A Mr. Carroll, I'm sorry, the copy I have  
3 of Mr. Caldwell's testimony is now missing  
4 unfortunately. Do you have an extra copy handy?

5 Q I do.

6 MS. LUCKHARDT: I'd like to object to  
7 this line of questioning. I'd like to know what  
8 the relevance of the --

9 HEARING OFFICER GEFTER: Microphone,  
10 please.

11 MS. LUCKHARDT: I guess I'd like to  
12 object to the relevance of this application, to  
13 this line of questioning. I believe we have a  
14 final determination on the variance that will be  
15 issued shortly by the Air District, and the  
16 application is no longer the most current and  
17 valuable document to use.

18 MR. CARROLL: Let me say first I have  
19 only a couple of questions which I don't think  
20 will take very long to answer. I also think that  
21 it's relevant because the witness has testified in  
22 great detail about the potential for emissions  
23 from this facility as a result of natural gas  
24 curtailments. And there is similar discussion  
25 regarding anticipated emissions from this facility

1 in this document.

2 And I'm trying to understand the  
3 relationship between the data that's been provided  
4 today and the data that was provided last week.

5 MS. LUCKHARDT: I guess I'll see what  
6 you ask about, but I'd still think that that  
7 document is not the most current and best version  
8 of the ultimate Air District finding. And I  
9 understand what you're trying to do.

10 MR. CARROLL: You can clarify, but I  
11 don't believe what I'm going to ask about would  
12 have changed --

13 HEARING OFFICER GEFTER: All right, just  
14 go ahead and ask the question.

15 BY MR. CARROLL:

16 Q Mr. Rubenstein, on page 4 of the  
17 variance petition which I've just provided you a  
18 copy of, there are some calculations near the top  
19 of that page regarding the anticipated emissions  
20 during the period of the variance.

21 Were you involved in preparing those  
22 emissions estimates?

23 A Actually, no, I was not. Someone from  
24 Duke Energy North America prepared those.

25 Q Are you familiar with how they arrived

1 at those estimates?

2 A In very general terms, yes.

3 Q The estimates are that peak day NOx  
4 emissions from unit four, which was the subject of  
5 the variance, would be 2.21 tons per day -- I'm  
6 sorry, 2.21 tons over the period of the variance,  
7 and that the total emissions would be 171.5 tons  
8 during the period of the variance.

9 Do you know what level of curtailment  
10 was assumed in arriving at, or potential  
11 curtailment was assumed in arriving at those  
12 estimated emissions?

13 A You're referring to curtailment of  
14 natural gas supplies?

15 Q Yes.

16 A I don't believe that any oil firing was  
17 assumed in calculating those excess emissions.

18 Q Okay, thank you. Let me ask you one  
19 more question, Mr. Rubenstein, perhaps one or two  
20 more.

21 You testified earlier that you thought  
22 it would be impossible, or at a minimum very  
23 difficult for the Encina and South Bay units to  
24 burn cleaner fuels at this time.

25 Is that true after the retrofits are in

1 place, as well?

2 A Yes, the concerns that I have about  
3 changing to a distillate fuel are true whether the  
4 retrofits occur or not, because they relate to the  
5 fuel supply system, fuel storage tanks and the  
6 burners, none of which are affected by the SCR  
7 retrofits.

8 Q And I do have just a couple more  
9 questions on your tables with your written  
10 testimony.

11 A Yes.

12 Q And specifically the table that's headed  
13 San Diego gas curtailment analysis.

14 A I have that in front of me. That would  
15 be the table on page 13? Small number at the  
16 bottom.

17 Q I'm afraid we may have written over the  
18 page numbers, but it says San Diego gas  
19 curtailment analysis at the top. We have a lot of  
20 notes on our version.

21 (Laughter.)

22 MR. RUBENSTEIN: I've got -- the only  
23 reason I ask that is there are two tables. One is  
24 my assumptions table, and the other is a summary  
25 table that has as a second line, daily emissions.

1 BY MR. CARROLL:

2 Q It's the assumptions table. It is  
3 table --

4 A I'm afraid I didn't number my tables,  
5 but if it's --

6 Q It's on page 7.

7 A Thank you.

8 Q Dropping down to the emission rates, and  
9 then dropping down to the SOx line, under gas  
10 fuel, and then reading over to the column for Otay  
11 Mesa, I see a .018 figure.

12 If I read backwards across the other  
13 rows for the various Encina and South Bay units,  
14 the figure is considerably lower, .007, .006.

15 That confuses me to some extent because  
16 presumably they're burning the same natural gas  
17 and the Otay Mesa project is considerably more  
18 efficient. So I'm wondering why the SOx emission  
19 rates for the Otay Mesa would be more than twice  
20 as high as the rates that you've assumed for the  
21 Encina and South Bay?

22 A Well, Mr. Carroll, I will I guess  
23 explain the Otay Mesa application, but the reason  
24 is that the sulfur content that was assumed in the  
25 application prepared by Otay Mesa was much higher

1       than the actual sulfur content experienced in San  
2       Diego area, and much higher than the default  
3       national emission factor, which is reflected in  
4       the numbers that I've used.

5               I agree that it's the same fuel, and for  
6       reasons that I'm not sure I understand, your  
7       application was prepared using a much higher  
8       sulfur number than I've used in other applications  
9       for that -- much higher than the default emission  
10      factor that's used, for example, in the acid rain  
11      program.

12             Q     Okay. And then one more question  
13      relating to your tables, and this would include  
14      all of the various scenarios, the 10, 20, 50 and  
15      100. And Commissioner Pernell addressed some of  
16      these questions, but I want to make sure that we  
17      understand.

18             None of these scenarios assume Otay Mesa  
19      Generation Project in operation?

20             A     Each of these scenarios could occur with  
21      or without Otay Mesa, and I made no judgments  
22      about the relative frequency with which they might  
23      occur, with or without Otay Mesa.

24             Q     But if Otay Mesa were included in your  
25      scenario, given its higher efficiency, then

1 obviously some of the load that's represented by  
2 the Encina and South Bay projects here would be  
3 met by Otay Mesa, and the emissions, in aggregate,  
4 would be lower and would certainly be lower at the  
5 Encina and South Bay projects, is that not  
6 correct?

7 A Actually that gets to another question  
8 of transmission congestion that I did not feel  
9 qualified to deal with, which is why I did not  
10 present my analysis in that way.

11 You have to make several assumptions in  
12 order to reach those conclusions and I did not  
13 feel qualified to make those assumptions.

14 Q Well, I'm not asking you to make any  
15 assumptions about at what level the various plants  
16 might be dispatched, but as a general matter, if  
17 Otay Mesa were in the system obviously Encina and  
18 South Bay in each of these scenarios would be  
19 operating at some --

20 MR. VARANINI: I object, it  
21 mischaracterizes the witness' testimony. What  
22 he's saying essentially is --

23 HEARING OFFICER GEFTER: That's okay,  
24 your objection is sustained.

25 MR. VARANINI: Okay. I can't give a



1 speech?

2 HEARING OFFICER GEFTER: No.

3 (Laughter.)

4 HEARING OFFICER GEFTER: Save it.

5 MR. VARANINI: Darn.

6 HEARING OFFICER GEFTER: Mr. Carroll,  
7 how many more questions do you have?

8 MR. CARROLL: We're complete at this  
9 time, thank you.

10 HEARING OFFICER GEFTER: Thank you.

11 MS. LUCKHARDT: I have just a few  
12 questions.

13 CROSS-EXAMINATION

14 BY MS. LUCKHARDT:

15 Q In your initial comments, Mr.  
16 Rubenstein, you talked about a partial SCR  
17 retrofit on unit four. Is the retrofits planned  
18 for unit four sufficient to meet the air quality  
19 requirements for that unit?

20 A If -- the SCR retrofit planned for unit  
21 four is sufficient in conjunction with some other  
22 modifications to the boiler to meet the unit  
23 specific limit in rule 69.

24 If rule 69 is amended those other  
25 modifications might not occur, but the SCR

1 installation will still occur nonetheless.

2 Q Okay, so in any event, is it your  
3 testimony that South Bay intends to comply?

4 A Yes, they will either comply with the  
5 rule on the books, or they will comply with the  
6 amended rule.

7 Q And, Mr. Rubenstein, you also talked  
8 about, or were asked questions about the cap. Can  
9 you explain what happens to the cap when fuel oil  
10 is burned under a force majeure situation?

11 A No. I will do my best. The reason why  
12 I say no is because there is no small amount of  
13 uncertainty on that issue at the moment.

14 First of all, let me make clear that as  
15 of January 1, 2001, the only place where any  
16 emission caps exist is in the two variance orders,  
17 the one already issued for the Encina plant, and  
18 the one expected to be issued for the South Bay  
19 plant.

20 As of January 1, 2001 there are no  
21 emission caps contained in the permits for the  
22 individual units, and there are no emission caps  
23 contained in rule 69.

24 HEARING OFFICER GEFTER: Can I interrupt  
25 your testimony --

1 MR. RUBENSTEIN: Sure.

2 HEARING OFFICER GEFTER: -- and ask the  
3 Air District whether that is an accurate  
4 description, and also if the Air District intends  
5 to impose permit caps on the entire project?

6 MR. MOORE: That is a correct  
7 description of the situation that will exist. And  
8 right now we are not intending to impose  
9 additional caps, although as there has been some  
10 discussion of amending rule 69, we have not made  
11 any decision to do that yet. If that occurs it's  
12 possible a cap will be imposed -- it's probable, I  
13 would say, a cap would be imposed pursuant to  
14 that.

15 HEARING OFFICER GEFTER: Again, I'm  
16 going to interrupt, Mr. Rubenstein, because this  
17 is on point.

18 Mr. Rubenstein has indicated a series of  
19 calculations where there are tremendous emissions  
20 resulting from the burning of fuel oil which are  
21 not capped by the Air District.

22 Are you aware of this information? Is  
23 this part of your rule 69 amendment proceeding?

24 MR. MOORE: We would certainly look at  
25 that during the amendment process for rule 69. We

1 have not looked at it in any detail right now.

2 HEARING OFFICER GEFTER: This amendment  
3 process is ongoing?

4 MR. MOORE: We have not officially  
5 decided to amend rule 69. We have been approached  
6 by both the facilities to amend it. We've been  
7 gathering information. But we have not decided to  
8 go ahead to amend the rule or not.

9 Right now the rule -- the existing rule  
10 would be the rule that I would consider to apply.

11 HEARING OFFICER GEFTER: Okay. Ms.  
12 Luckhardt.

13 MS. LUCKHARDT: Okay, I wasn't sure  
14 whether you were complete.

15 BY MS. LUCKHARDT:

16 Q Mr. Rubenstein, you were asked some  
17 questions about your analysis. Would you consider  
18 your analysis to be typical -- let me start again.

19 When you do an analysis for the Energy  
20 Commission do you usually analyze the worst case  
21 as one of your -- as what you analyze?

22 A Yes, worst case in the context of the  
23 question I try to answer.

24 Q Okay, so when you looked at the amount  
25 of pounds per hour emitted, were you using what

1 would be considered the worst case numbers?

2 A In the case of all pollutants except  
3 oxides of nitrogen the emission estimates that I  
4 included were my best estimates. They are neither  
5 optimistic nor pessimistic.

6 In the case of oxides of nitrogen  
7 because that pollutant is going to be very tightly  
8 controlled on most of the units, I used the  
9 applicable emission limits because I believe those  
10 will be, in fact, very close to what the emissions  
11 will be.

12 And since all of these retrofits are  
13 occurring in the future, I can't predict with any  
14 certainty just how far below the permitted level  
15 they will be. And as I indicated earlier, my  
16 judgment is that the actual emissions of NOx will  
17 be probably within about 10 percent of the  
18 permitted levels. And certainly below the  
19 permitted levels.

20 Q And then Mr. Carroll referring you to  
21 the variance application. Can you please give us  
22 an understanding of what that time period that  
23 variance application covers?

24 HEARING OFFICER GEFTER: Is that with  
25 respect to Encina or to --

1 MS. LUCKHARDT: With respect to South  
2 Bay.

3 HEARING OFFICER GEFTER: -- with respect  
4 to Duke? To South Bay.

5 MR. RUBENSTEIN: I believe you're  
6 referring to the document that was handed to me as  
7 page 4 of the variance petition.

8 And the excess emissions calculation  
9 covered a period of nine months through the end of  
10 September 2001.

11 BY MS. LUCKHARDT:

12 Q And are you aware of whether -- or can  
13 you please explain what the mitigation that was  
14 required for South Bay for this variance? Can you  
15 describe that mitigation?

16 A The mitigation that was required for  
17 South Bay as a condition of obtaining the  
18 variance, -- I'm doing this from memory since I  
19 don't have my variance file with me -- included a  
20 requirement to operate the emission controlled  
21 units preferentially to minimize NOx emission  
22 during the course of the year.

23 A limitation on the annual NOx emissions  
24 from the facility, which again goes beyond  
25 anything in current rules to, I believe it was 359

1 tons per year.

2 And in addition, the payment of an  
3 excess emissions fee, similar in concept to the  
4 mitigation fee that's been discussed here today,  
5 but calculated in a different manner, and  
6 obviously for a different purpose. But that's the  
7 third element of the mitigation requirement, was  
8 payment of a mitigation fee for all excess NOx  
9 emissions during the course of the year.

10 Q And can you compare the amount of  
11 mitigation fees between the two projects?

12 A Yes.

13 Q Are they relatively equivalent or --

14 A No. The mitigation fee that was  
15 assessed on the South Bay facility by the San  
16 Diego District Hearing Board was an amount of  
17 \$1600 per ton for each ton of excess emissions  
18 during the variance period.

19 By comparison the agreement that we  
20 heard this morning of a payment of \$1.2 million as  
21 a mitigation fee for 171 tons of emissions being  
22 emitted each year for 30 years is equivalent to  
23 \$233 per ton.

24 So it's \$233 per ton under the agreement  
25 presented today for Otay Mesa; \$1600 per ton under

1 the requirement imposed by the Hearing Board on  
2 the South Bay facility last week.

3 Q Thank you.

4 MS. LUCKHARDT: I have nothing further.

5 HEARING OFFICER GEFTER: Ms. Duncan, do  
6 you have cross-examination of the witness?

7 MS. DUNCAN: No.

8 HEARING OFFICER GEFTER: Mr. Claycomb?

9 MR. CLAYCOMB: No, ma'am.

10 HEARING OFFICER GEFTER: Staff, do you  
11 have any questions? All right.

12 Mr. Varanini, do you have redirect of  
13 your witness?

14 MR. VARANINI: Yes, I do. I was really  
15 startled and stimulated by Commissioner Pernell's  
16 question, and I think that I'd like the witness to  
17 also do just a little bit of thinking about it,  
18 because it seems to me that those types of  
19 questions can be answered by certain modeling or  
20 analytical exercises.

21 REDIRECT EXAMINATION

22 BY MR. VARANINI:

23 Q Mr. Rubenstein, have you --

24 MR. CARROLL: Excuse me, is counsel now  
25 testifying in response to the question of



1 Commissioner Pernell, or --

2 MR. VARANINI: I just gave a speech.

3 MR. CARROLL: I object to this leading  
4 of the witness to go onto the record and make a  
5 speech about what he wants the witness to say, and  
6 then turn to the witness and ask a question.

7 PRESIDING MEMBER LAURIE: That's fine,  
8 Mr. Carroll. Thank you.

9 HEARING OFFICER GEFTER: Okay.

10 BY MR. VARANINI:

11 Q Mr. Rubenstein, have you participated in  
12 joint analytical exercises with electric system  
13 modelers to determine likely outcomes of different  
14 plant additions or deletions from the electrical  
15 system?

16 A Yes, I have, on many occasions.

17 Q And does the Commission use that from  
18 time to time to delve into the no-project  
19 alternative?

20 A Yes, I'm aware that the Commission has  
21 used those types of analyses in the past.

22 Q And are you and Mr. Weatherwax prepared  
23 to answer Commissioner Pernell's question?

24 A Yes, I can provide the emissions related  
25 assumptions to meld with Mr. Weatherwax's system

1 modeling analysis to specifically answer that  
2 question.

3 Q And would that analytical exercise be  
4 more focused if he were to make discrete cost  
5 production model runs to give to you to make an  
6 air analysis?

7 A Yes, it would.

8 MR. VARANINI: I have no further  
9 questions.

10 HEARING OFFICER GEFTER: Mr. Varanini,  
11 do you want to move exhibit 82 into the record?

12 MR. VARANINI: Yes, I do.

13 HEARING OFFICER GEFTER: Are there any  
14 objections to exhibit 82, which is Mr.  
15 Rubenstein's written testimony?

16 Hearing no objections exhibit 82 is  
17 received into the record.

18 Does Cabrillo have any other witnesses  
19 on the topic of air quality?

20 MR. VARANINI: No, we don't, but we will  
21 file an offer of proof with the Committee to lay  
22 out an objective analytical program and a timeline  
23 to answer both Commissioner Laurie's XY and Z  
24 analog, and Commissioner's Pernell's discrete  
25 question on what may happen, rather than ranges of

1 concerns about what might happen.

2 HEARING OFFICER GEFTER: Thank you.

3 Question for the Air District before we move on.

4 I'm very glad that you've stayed with us today.

5 With respect to the testimony that you  
6 heard from Mr. Rubenstein and the potential for  
7 air quality impacts from the burning of fuel oil  
8 at the Encina and South Bay plants, do you have  
9 any additional information or advice, as the Air  
10 District, for the Committee on this subject?

11 MR. MOORE: Well, I guess to start off I  
12 would say that we do think that the project is a  
13 good project, Otay Mesa is a good project. We're  
14 very interested in seeing newer, cleaner, more  
15 efficient electric generating facilities built,  
16 especially ones that are going to demonstrate  
17 technology such as Otay Mesa.

18 But we are very concerned about gas  
19 curtailment problems in the area.

20 In our view the way to correct that is  
21 to increase the supply of gas. And I would, I  
22 guess, respectfully urge the Commission to support  
23 our efforts before the Public Utilities  
24 Commission, both to revise the way curtailments  
25 are done, and also to investigate why there is not

1 a sufficient supply of gas in San Diego County.

2 Emergency letters requesting emergency  
3 relief from the current curtailment scheme have  
4 been filed by both Duke and Cabrillo just  
5 recently; and the District supports those letters.

6 In our view the sale of gas to Rosarita  
7 Beach is the major problem right now, based on the  
8 evidence we've seen. We may -- we're open to  
9 seeing additional information, but that we view as  
10 the main problem.

11 And we would urge the Commission to  
12 support our efforts to require that Rosarita Beach  
13 be fully curtailed before any of the plants in the  
14 San Diego area are curtailed.

15 HEARING OFFICER GEFTER: Thank you. And  
16 with respect to the South Bay project, there was  
17 an indication in that emergency appeal that South  
18 Bay was intending to decommission the plant and  
19 build new units. Is that something that the  
20 District is overlooking, is actually monitoring?

21 MR. MOORE: Well, we know that there has  
22 been talk about that. There has been no -- they  
23 have not approached us with an application or  
24 anything like that.

25 It's the long-term goal, we believe, of

1 Duke Energy to do that. But as to when exactly we  
2 don't know. We'd certainly encourage that, both  
3 from an air pollution point of view, and from an  
4 efficiency point of view as far as electric  
5 utility system.

6 HEARING OFFICER GEFTER: I'm going to  
7 ask Ms. Luckhardt if Duke has a statement as to  
8 their intent to decommission the existing units  
9 and build new projects -- new units.

10 MS. LUCKHARDT: We are required to  
11 replace the unit by 2009. And we're making every  
12 effort to see if we can get it done in advance of  
13 that timeline.

14 HEARING OFFICER GEFTER: Is that unit  
15 four or all the units?

16 MS. LUCKHARDT: The entire facility.

17 HEARING OFFICER GEFTER: Thank you.

18 MS. LUCKHARDT: And at this point it  
19 wouldn't be any earlier than 2005 or 2006.

20 HEARING OFFICER GEFTER: Thank you. All  
21 right. We're going to take a recess, about five  
22 minutes. Off the record.

23 (Off the record.)

24 HEARING OFFICER GEFTER: On the record.

25 Before we hear testimony from Holly Duncan on air

1       quality, the staff wanted to recall the Air  
2       District witness and ask a few more questions to  
3       help clarify the record.

4               Mr. Ogata.

5               MR. OGATA: Thank you, Ms. Gefter.

6                       DIRECT EXAMINATION

7       BY MR. OGATA:

8               Q     I just wanted to ask Mr. Moore if he  
9       could give a further explanation about the  
10      District's jurisdiction over PM10 standards and  
11      how he perceives it overlaps or doesn't overlap  
12      with what staff does.

13               I knwo he gave an answer previously, but  
14      I think for the record if we could ask him to be a  
15      little more detailed about that.

16               A     Yes. As I said, the District rules and  
17      regulations are based on both the Federal Clean  
18      Air Act and the California Clean Air Act, and  
19      basically we determine compliance with all the  
20      standards that derive from those Acts.

21               In the case of PM10 there's an emission  
22      limit in the permit that's based on the maximum  
23      emissions from the unit. And air quality impact  
24      analysis and modeling was done to determine  
25      compliance with both the federal and the state

1 standards in regard to that limit.

2 HEARING OFFICER GEFTER: With respect to  
3 BACT and the offset requirement, is that with  
4 respect to the federal and/or state or federal  
5 standard for --

6 MR. MOORE: With respect to the federal,  
7 the ambient air quality standards, the modeling  
8 was done. As far as BACT goes, there's a state  
9 requirement that if it's over 10 pounds a day,  
10 BACT is imposed. That was imposed. That was  
11 evaluated.

12 Offsets are not required for PM10 by our  
13 rules and regulations except in certain  
14 situations. And that situation would be that the  
15 ambient air quality standard was exceeded. It's  
16 not exceeded in this case.

17 There's certain limited exceedances  
18 allowed if offsets are provided. But that was not  
19 the case here, and so PM10 offsets would not be  
20 required of this project.

21 BY MR. OGATA:

22 Q And, Mr. Moore, Mr. Rubenstein  
23 testifying about the fuel burning episodes last  
24 week, indicated he didn't know whether or not  
25 there were any air violations as a result of that.

1                   Are you aware of any air violations as a  
2     result --

3           A     I'm not aware of any air violations that  
4     resulted from that.

5                   MR. OGATA:  Thank you, that's all I  
6     have.

7                   HEARING OFFICER GEFTER:  All right,  
8     we're going to move on and ask Ms. Duncan, do you  
9     have testimony on air quality.

10                   We'll get back to you when you get to  
11     Mr. Caldwell.  
12     Whereupon,

13                                 HOLLY DUNCAN  
14     was recalled as a witness herein and having been  
15     previously duly sworn, was examined and testified  
16     further as follows:

17                                 DIRECT TESTIMONY

18                   MS. DUNCAN:  Yes, I do.  I would direct  
19     the Committee to please once again look at my  
20     exhibit J that was submitted that is addressing  
21     distributed generation.

22                   HEARING OFFICER GEFTER:  And that is in  
23     which exhibit?

24                   MS. DUNCAN:  That's part of my  
25     testimony.



1                   HEARING OFFICER GEFTER: Right, we had  
2                   it listed in the exhibit list. Okay, go ahead and  
3                   I'll find it and identify it.

4                   MS. DUNCAN: Okay. So I can keep to my  
5                   five minutes?

6                   HEARING OFFICER GEFTER: Yes, go ahead.

7                   MS. DUNCAN: I continue to feel that the  
8                   air quality issues surrounding this project are so  
9                   unsettling it has turned into a multidisciplinary  
10                  approach.

11                  We're talking lack of natural gas  
12                  availability and how that's going to impact things  
13                  until that issue gets resolved.

14                  There are apparently transmission  
15                  issues, a brittle system that could be made more  
16                  brittle, if I understand the analyses I've been  
17                  listening to, as a result of this.

18                  And I think we are closing in on some  
19                  PM10 mitigation, but again issues have been raised  
20                  about is it equitable compared to the issues of  
21                  mitigation for other generators that are in this  
22                  room.

23                  I believe that all of these issues are  
24                  obviated by going with my program that I have  
25                  suggested of solving any -- if there are any, and

1 I question that -- energy shortfalls in our area  
2 by off-gridding and existing industrial and  
3 business parks.

4 And I believe that a lot of the problems  
5 we're talking about here would be solved by doing  
6 that proposal. So I request that you respectfully  
7 at least consider my proposal under alternatives.

8 Thank you.

9 HEARING OFFICER GEFTER: Thank you. And  
10 your proposal is contained in exhibit 70, which  
11 was received into the record last week.

12 MS. DUNCAN: Right.

13 HEARING OFFICER GEFTER: Thank you. Mr.  
14 Claycomb, you indicated --

15 MR. CLAYCOMB: Nothing.

16 HEARING OFFICER GEFTER: -- you had  
17 nothing on air? All right.

18 The applicant wishes to call Mr.  
19 Caldwell as a rebuttal witness.

20 MR. CARROLL: Yes, at this time we call  
21 James Caldwell.

22 HEARING OFFICER GEFTER: Mr. Caldwell,  
23 would you please be sworn by the reporter.

24 //

25 //

1       Whereupon,

2                       JAMES H. CALDWELL, JR.

3       was called as a witness herein and after first  
4       being duly sworn, was examined and testified as  
5       follows:

6                       DIRECT EXAMINATION

7       BY MR. CARROLL:

8               Q     Mr. Caldwell, could you please state  
9       your name for the record.

10           A     James H. Caldwell, Jr.

11           Q     And where are you employed?

12           A     I am a consultant, self employed.

13           Q     And could you briefly describe for us  
14       your experience?

15           A     I've been in the energy business for 35  
16       years, the first 15 in the oil refinery. I have  
17       blended number six fuel oil, made number two fuel  
18       oil, burned a lot of it.

19                    Operated maybe 50, 60 boilers, burners,  
20       different kinds of things. Both myself,  
21       supervised people who operate that, manage people  
22       who supervise that. I was Operations Manager at  
23       ARCO's Watson Refinery, which is now BP AMOCO.

24                    And then since, for the past ten years,  
25       I've been involved in alternative energies, air

1       quality analysis specifically relating to power  
2       plant construction around the world.

3           Q     Thank you.  Have you had an opportunity  
4       to review the written testimony of Mr. Rubenstein  
5       which has been submitted as exhibit 82?

6           A     Yes, I have.

7           Q     And could you please, if you would,  
8       explain to us your reaction to the analysis  
9       conducted by Mr. Rubenstein?

10          A     I think, first my reactions to the  
11       written testimony, since the oral testimony was  
12       quite a bit different set of subjects, but the  
13       written testimony I had about three reactions.

14               First was that there is an inconsistency  
15       which came out in terms of the Otay Mesa's sulfur  
16       emissions rate.  And that Mr. Rubenstein's  
17       characterization that except for the NOx emission  
18       rates, that they were his best judgment is at  
19       least contradicted by the footnotes, if nothing  
20       else.

21               The main reaction I guess I had from the  
22       written testimony was the assumption about the  
23       amount of generation to which these emission rates  
24       should be applied to, which, as I calculated it,  
25       32,700 megawatt hours in a 24-hour period.  That's

1       about 1330 megawatt hours per hour for 24 hours.

2               I do not believe that that is a  
3       plausible scenario for the operation of Encina and  
4       South Bay in the context of an Otay Mesa plant  
5       that is also operating at the same time.

6               Q     And is that assumption that you question  
7       reflected in each of the scenarios analyzed by Mr.  
8       Rubenstein?

9               A     In all of them, yes.

10              Q     I didn't mean to cut you off, did you  
11       have any other comments that you wanted to add?

12              A     Well, so as I was sort of furiously  
13       trying to take notes about the additional  
14       testimony, other than what was in the written  
15       testimony, I guess I'd have to refer to the  
16       transcript in order to have a quantitative answer  
17       to some of the numbers, because, you know, it just  
18       was too fast and furious.

19              But as I listened to the assumptions I  
20       believe what happened is that what was  
21       characterized as a worst case analysis by the time  
22       it was over was an implausible analysis.

23              In other words, that the series of  
24       assumptions, as you went one through ten, and you  
25       know, about what was the SOx emission rates, what

1       was the NOx emission rates, what was the  
2       generation, what generation was required for  
3       reliability, what generation was required for Otay  
4       to run, whether Otay was gas curtailed at the same  
5       time and therefore couldn't run.

6               That there was no cap on the emissions;  
7       that there was no change in rule 69; that they  
8       were burning the worst fuel that they possibly  
9       could under the rules; that they could have the  
10      maximum emission rates that they possibly could  
11      under the rules.

12             That by the time you get to assumption  
13      ten, what you have then is a scenario that is no  
14      longer a worst case analysis, but is an almost  
15      physical impossibility to hit all of those  
16      assumptions all at the same time.

17             And just based upon a quick read of  
18      that, again subject to something going into the  
19      record and quantifying it, my guess is that the  
20      import that the emissions are overstated by a  
21      factor of somewhere between five and ten.

22             Q     There was also some testimony from Mr.  
23      Rubenstein related to the ability of the Encina  
24      and South Bay plants to operate on anything other  
25      than -- let me rephrase that.

1                   There was some testimony regarding the  
2                   significant difficulties associated with operating  
3                   Encina or South Bay plants on anything other than  
4                   number six distillate.

5                   Based on your experience do you have any  
6                   opinion as to the magnitude of those difficulties?

7                   A     I believe the testimony was something to  
8                   the effect that he had talked to the plant  
9                   operators and they told him the extreme  
10                  difficulty.

11                  I can say that based upon my experience  
12                  that that makes absolutely no sense. That, as a  
13                  matter of fact, he probably does burn distillate  
14                  oil at times on those burners with those tanks,  
15                  that it is common practice to have what's normally  
16                  called cutter stock to flush out the number six  
17                  fuel oil out of the lines. And that is normally  
18                  burned for at least a few minutes or a minute or  
19                  two, both at startup and the shutdown to clear the  
20                  lines both to and from the tanks.

21                  And that is approximately the same  
22                  viscosity as distillate fuel oil. The burners  
23                  don't know the difference. The boiler doesn't  
24                  know the difference. And so it is implausible to  
25                  me as to how it could be that it is difficult or

1 almost impossible to burn number two in the Encina  
2 Power Plant.

3 I have to say that I've never been  
4 inside the Encina Power Plant, itself. I have, in  
5 a previous life, I've been inside three or four of  
6 Southern California Edison and L.A. Department of  
7 Water and Power power plants. They were built by  
8 the same person, the same age.

9 And I have witnessed the burning of  
10 distillate oil in those power plants. And we have  
11 sold them distillate oil, I have sold those people  
12 distillate oil to be burned in those power plants.

13 So, it's implausible to me. And I guess  
14 I'd have to talk to the Encina guy to figure out  
15 what he's saying. Doesn't make any sense.

16 Q There was also some testimony regarding  
17 the availability of fuel oil with sulfur content  
18 of less than .5 percent. Do you have an opinion  
19 as to whether or not such fuel oil is available in  
20 California?

21 A Well, you know, there are very very few  
22 places in California where number six residual  
23 fuel is capable of being burned anyway, so it's  
24 not implausible to me that he can't call up and  
25 find a bunch in storage, because no one, no



1 refiner keeps a inventory of something for which  
2 there's no customer.

3 If he asked them to blend a fuel to  
4 those specifications, .2, .3, it's perfectly  
5 available. That's a fuel that's sold on the New  
6 York Nynex, and there's hundreds and thousands, or  
7 I guess thousands of contracts for fuel sold  
8 around the world.

9 It's a major product of countries like  
10 Indonesia that are certainly within the sphere of  
11 supply of southern California. So it doesn't  
12 surprise me that he couldn't call and get a load  
13 of low sulfur number six in southern California,  
14 because there's no customers for that.

15 But if he asked them, if he gave them a  
16 month, if he explained the supply to anywhere in  
17 the east coast, gulf coast, Indonesia, Alaska,  
18 Japan, Germany, it's a common fuel that's sold in  
19 commerce.

20 Q Can you give us some information on the  
21 price differential between number six residual and  
22 the fuel that you just testified is readily  
23 available commercially?

24 A It is true that higher sulfur fuels and  
25 higher viscosity fuels tend to be cheaper than

1 lower viscosity fuels and lower sulfur fuels. And  
2 that quality differential tends to vary over time.

3 The difference between .2 percent sulfur  
4 number six and .5 percent sulfur number six is  
5 probably in the order of 2 or 3 percent, something  
6 along that line, would be sort of a standard  
7 differential.

8 Between number six as a generic fuel and  
9 number two as a generic fuel, or distillate as a  
10 generic fuel, that differential is probably in the  
11 order of 15 percent with maybe a minimum of 10,  
12 maximum of 20, depending upon the season,  
13 availability. How much notice you give these  
14 people to plan for that customer.

15 Q And is there an ultra low sulfur fuel  
16 that would be even cleaner than the number two  
17 that you're referring to that would be capable of  
18 being burned in these units?

19 A Yes, there are both grades of sulfur in  
20 number two ranging from .5 percent sulfur number  
21 two, which you can buy, down to what is normal in  
22 the State of California, which is about, has a  
23 specification of .05, or one-tenth the sulfur, and  
24 normally runs about 300 ppm or .03.

25 You can also buy at -- BP AMOCO and

1 Chevron have announced the availability of .01  
2 percent sulfur distillate fuel today. Regulations  
3 are tightening so that that will become the fuel,  
4 the normal fuel in commerce at .01 percent --

5 HEARING OFFICER GEFTER: Excuse me, Mr.  
6 Caldwell. I'm sorry to interrupt. Two questions.  
7 One is you said that regulations are now  
8 tightening the type of fuel that can be sold and  
9 burned in California, is that what --

10 MR. CALDWELL: That's correct.

11 HEARING OFFICER GEFTER: And what agency  
12 is establishing those regulations?

13 MR. CALDWELL: Those are CARB  
14 regulations --

15 HEARING OFFICER GEFTER: CARB.

16 MR. CALDWELL: -- for both on-road and  
17 off-road distillate fuels.

18 HEARING OFFICER GEFTER: And may I ask  
19 the Air District, Mr. Moore, a question? With  
20 respect to the pollutants that Mr. Rubenstein  
21 indicated would be emitted from the burning of  
22 fuel oil in both the Encina and South Bay plants,  
23 could the Air District require those plants to use  
24 ultra-low sulfur fuel as part of your permit  
25 process?

1           MR. MOORE: They haven't applied for any  
2       modifications of their permit at this time. In  
3       context of a curtailment scheme with the PUC, that  
4       might be a requirement that the PUC would make.  
5       But right now they have not applied to modify the  
6       permits, and our current rule allows a half a  
7       percent sulfur in oil.

8           HEARING OFFICER GEFTER: And, Mr.  
9       Caldwell, following up on your testimony that you  
10      understand CARB is promulgating regulations on the  
11      sale of low sulfur fuel, do you have any idea of  
12      the timeline on that?

13          MR. CALDWELL: If my memory serves me  
14      correct that the next ratchet of sulfur content  
15      for distillate fuels -- now I want to make clear  
16      that as Steve Moore pointed out, we're not talking  
17      about number fuel oil, you know, CARB does not  
18      have a regulation on the books for the alternate  
19      backup fuel, to my knowledge anyway, that could be  
20      burned in Encina and South Bay. That is a  
21      District rule.

22          What I was speaking to is the  
23      availability of alternate low sulfur fuels that  
24      are items in commerce and they're sold in much  
25      higher quantities than what we're talking about

1 here. And therefore, are available to be burned  
2 if someone wanted to.

3 In that context the next ratchet of CARB  
4 rules is 2002, the end of 2002. And as I stated,  
5 there are at least two refiners in the State of  
6 California that have announced in advance of those  
7 rules that they are offering for sale, I believe  
8 BP AMOCO's announcement was 15 ppm, which is .0015  
9 sulfur fuel.

10 HEARING OFFICER GEFTER: All right. Mr.  
11 Carroll, do you want to move on with your  
12 questions.

13 MR. CARROLL: Yes, at this time we don't  
14 have any further questions of Mr. Caldwell and  
15 he's tendered for cross-examination.

16 HEARING OFFICER GEFTER: Thank you.  
17 Does staff have cross-examination?

18 MR. OGATA: Staff has no questions.

19 HEARING OFFICER GEFTER: Cabrillo.

20 MR. VARANINI: We have a few.

21 CROSS-EXAMINATION

22 BY MR. VARANINI:

23 Q I'd like to ask Mr. Caldwell a couple  
24 questions about his background, because I think  
25 that his synoptic knowledge is very very

1       impressive.

2                   HEARING OFFICER GEFTER:   Just ask the  
3       question, please.

4                   MR. VARANINI:   Okay.

5       BY MR. VARANINI:

6           Q     Mr. Caldwell, do you have legal  
7       training, are you an attorney?

8           A     No.

9           Q     And do you, in your current position  
10      with your current company, do you engage in air  
11      analysis and emissions management types of  
12      analyses for clients?

13          A     Yes.

14          Q     And did you work with the applicant here  
15      on the mobile offset program?

16          A     Yes.

17          Q     And you indicate that you are currently  
18      in the investment business, yourself, is that  
19      right?  In the energy investment business is on  
20      your rÇsumÇ?

21          A     Yes, I do.

22          Q     And does that help --

23          A     I am not currently.  I can this, as we  
24      sit here and speak, I do not currently am not  
25      investing in any project for my own equity.

1 Q Okay.

2 A But I do that as a normal course of  
3 business --

4 Q And do you advise others in terms of  
5 purchase and sale of energy assets or development  
6 programs?

7 A Yes.

8 Q And did you provide any advice to this  
9 particular applicant in terms of that area of  
10 expertise?

11 A This applicant, I assume you mean Otay  
12 Mesa?

13 Q That's the one.

14 A And what was the area of expertise you  
15 were --

16 Q Your financial expertise.

17 A No.

18 Q In terms of your electricity advice to  
19 clients, do you utilize models to advise them?

20 A It's hard to avoid the use of models  
21 these days, especially if you deal with the Energy  
22 Commission.

23 Q I don't mean to insult you, but there  
24 was some -- you might have been present when there  
25 was some concern about this. Do you know what a

1 cost production model is?

2 A Yes.

3 Q And a chronologic cost production model?

4 A Yes.

5 Q And a residual program coming off of a  
6 chronologic production cost model?

7 A I'm not totally familiar with the term  
8 residual program. I mean it is true, it is a  
9 common practice to flange up a spreadsheet or  
10 something like that off the end of a cost  
11 production model so that you can get the output in  
12 a different form, in a form that you want. But I  
13 don't know the word residual in that context.

14 HEARING OFFICER GEFTER: Mr. Varanini,  
15 what is the relevance of this?

16 MR. VARANINI: I'm just trying --

17 HEARING OFFICER GEFTER: The witness  
18 testified about fuel oil.

19 MR. VARANINI: That's exactly the  
20 questions I want to ask. I'm just laying some  
21 foundation because what I'm concerned about is  
22 that we're actually being given advice and we are  
23 grateful for that advice in the sense of the  
24 record here in terms of a better fuel and better  
25 emissions control --



1                   HEARING OFFICER GEFTER: Fine, you could  
2 talk to him about that off the record. Just go on  
3 with your questions and try to keep them relevant.

4                   MR. CALDWELL: Do you want my rates for  
5 giving that advice?

6                   MR. VARANINI: Yeah, yeah, you might as  
7 well.

8                   (Laughter.)

9 BY MR. VARANINI:

10               Q     In terms of your judgments about  
11 alternative fuels, did you do any study of the  
12 tanks and pipelines and other capabilities at the  
13 Encina plant?

14               A     No.

15               Q     Do you know when the last time oil was  
16 burned at the Encina plant?

17               A     I heard today it was last week. Maybe  
18 it's being burned now, I don't know, but it's, you  
19 know, --

20               Q     And what was the period of time before  
21 that, do you know when it was last burned before  
22 last week?

23               A     I don't know.

24               Q     Would you change your testimony if you  
25 were told that oil hadn't been burned in that

1 facility and had remained in that facility for  
2 over ten years?

3 A Well, I guess that would make me more  
4 confident in my testimony because what you're  
5 saying is that the equipment was designed ten  
6 years ago, and was at least running and operating  
7 ten years ago. And nothing has been changed,  
8 nothing has been taken out in that period of time  
9 which would prevent that.

10 And so it doesn't -- it would make me  
11 more confident of my testimony.

12 Q As a plant manager would you have  
13 confidence in a system that's been used two times  
14 over a ten-year period?

15 A If I was a prudent plant manager I would  
16 certainly, if I was notified of the possibility of  
17 a curtailment, I would certainly make sure that I  
18 understood what the condition of the equipment  
19 that I had under my control was, yes.

20 HEARING OFFICER GEFTER: Mr. Varanini,  
21 is this a hypothetical, or is this an actual fact,  
22 that fuel oil had not been burned in the last ten  
23 years?

24 MR. VARANINI: We have witnesses --

25 HEARING OFFICER GEFTER: We haven't

1       heard the witnesses say that.

2               MR. VARANINI:  Yes, you did.  Mr.  
3       Weatherwax was talking about the inventory  
4       yesterday and he indicated that, if I remember  
5       correctly, because he said a lot of things,  
6       essentially that the oil that was used for the  
7       burn prior to last week was the same oil burned  
8       last week, and it had been there for a very very  
9       long period of time, I believe ten years.

10              MR. CARROLL:  Well, I don't think you  
11       can draw a conclusion from that.  And furthermore,  
12       I remember Mr. Weatherwax's testimony quite to the  
13       contrary, because it was quite clever.  I believe  
14       he said that there was less, which would imply to  
15       me that it had been burned in the interim.

16              HEARING OFFICER GEFTER:  We will --

17              MR. VARANINI:  Well, it was a draw-  
18       down --

19              HEARING OFFICER GEFTER:  -- look at the  
20       transcript.  Okay, --

21              MR. CALDWELL:  Well, I could answer  
22       that, too, but --

23              HEARING OFFICER GEFTER:  -- we're going  
24       off the record.

25              (Off the record.)

1                   HEARING OFFICER GEFTER: Back on the  
2                   record.

3                   BY MR. VARANINI:

4                   Q     Mr. Caldwell, have you reviewed the age,  
5                   condition and changes necessary on the tanks at  
6                   Encina to burn distillate?

7                   A     No.

8                   Q     Is distillate a much more volatile fuel  
9                   than number six?

10                  A     No.

11                  Q     Why do you say that?

12                  A     It has the same flash point, because the  
13                  flash point of number six is generally controlled  
14                  by the amount of number two that is blended into  
15                  number six in order to get the viscosity right.

16                  Q     Does it have the same volatility?

17                  A     It has the same volatility. Flash  
18                  point, I mean if you blend a little bit of diesel  
19                  and a little bit of distillate into number six  
20                  fuel, that is the volatility. So it has the same,  
21                  number two and number six have the same  
22                  specification for volatility, ASTM and actual.

23                  Q     Do diesel tankage usually require  
24                  floating roofs?

25                  A     No.

1 MR. VARANINI: I just have a question.

2 Did you introduce his prefiled testimony or is  
3 that not an issue here?

4 MR. CARROLL: No, we did not.

5 HEARING OFFICER GEFTER: What I have is  
6 part of it is exhibit 75, part of his testimony.  
7 And then he also submitted additional testimony as  
8 exhibit 85.

9 MR. CARROLL: We're not putting forth  
10 that portion of 75. We're presenting Mr. Caldwell  
11 exclusively for purposes of rebuttal to the  
12 testimony of Mr. Rubenstein.

13 HEARING OFFICER GEFTER: Thank you.

14 MR. CARROLL: That's with respect to 75.  
15 With respect to 85 I believe that was the variance  
16 information which has already been admitted into  
17 the record.

18 HEARING OFFICER GEFTER: Correct.

19 BY MR. VARANINI:

20 Q Would you --

21 A One --

22 Q Sure.

23 A I answered a quick no to his last  
24 question and I think I probably better clarify  
25 that in the sense that --

1                   HEARING OFFICER GEFTER:  What was the  
2                   question?

3                   MR. CALDWELL:  The question was is  
4                   distillate, as I recall, does distillate fuel  
5                   normally require floating roofs, was that correct?

6                   BY MR. VARANINI:

7                   Q     Tankage, yes.

8                   A     Yes.  Some distillates do require  
9                   floating roofs.  Distillate is a generic term.  It  
10                  means that it is boiled overhead.  The number two  
11                  fuel oil does not normally require floating roofs.  
12                  Some distillates do require floating roof --

13                  Q     Are there --

14                  A     -- more volatile distillates.

15                  Q     Are there higher numbers, is that the  
16                  way it works?

17                  A     Well, there is number one, which is  
18                  normally called kerosene.  When you get lighter  
19                  than that, you're talking about gasoline and there  
20                  is no -- the common designation goes away from  
21                  fuel oil.  That doesn't use for anything lighter  
22                  than number one.

23                  Q     Is number two more explosive than number  
24                  six in terms of exposure to the public in a risk  
25                  assessment?

1           A     No.

2           Q     Would you do a risk assessment before  
3           you committed number two to a number six tankage  
4           at Encina or a plant like that?

5           A     You know, it would certainly be  
6           reasonable to make an assessment along those  
7           lines. I would suspect that that assessment would  
8           come out that there may be some minor changes,  
9           maybe some pump gear ratios, maybe some orifice  
10          sizes.

11                   I would certainly want to look to make  
12          sure that there was no corrosion; that the  
13          pressures were the same; that, you know, the tank  
14          bottom didn't have a big hole in it, or if it did,  
15          that I made sure that I left a little bit of water  
16          in the tank so that I didn't leak any oil.

17                   Those sorts of things. But that's -- I  
18          would not consider that to be a major risk  
19          assessment or a major capital investment. We're  
20          talking about, you know, I would write some orders  
21          in an order book and have somebody check those  
22          things out. And maybe I'd have to go down to the  
23          hardware store and buy a few parts. That's the  
24          way I would characterize what I would have to do.

25                   HEARING OFFICER GEFTER: Thank you, Mr.

1 Caldwell.

2 (Laughter.)

3 MR. CALDWELL: I'm exaggerating for the  
4 sake of emphasis.

5 MR. VARANINI: And ARCO is now --

6 HEARING OFFICER GEFTER: Okay, let's  
7 move on.

8 MR. VARANINI: And ARCO is now British  
9 Petroleum, isn't that right?

10 MR. CALDWELL: Correct, yes.

11 MR. VARANINI: I just have a couple of  
12 additional questions.

13 BY MR. VARANINI:

14 Q Did you provide any advice to the  
15 applicant on dual fuel technology for their  
16 facility?

17 A I did participate in a group which did a  
18 survey of alternates for alternate fuels for Otay  
19 Mesa.

20 Q And what was the result of that survey,  
21 if you remember?

22 A I did not participate in any of the  
23 decisions. I don't know what the answer was. I  
24 provided input to that. And I was never asked for  
25 any conclusions. And I never gave any



1 conclusions.

2 But I did provide input into that study.

3 Q In your analysis did you look at propane  
4 or CNG as a backup fuel?

5 A I looked at propane and CNG and  
6 discarded them. What I did do is I provided for  
7 the client some parameters that they might want to  
8 look at if they used either number two distillate,  
9 synthetic alternates to number two distillate, and  
10 LNG as opposed to CNG.

11 Q And if you went to an alternate, would  
12 you have to modify any of the burner system or  
13 pipe systems that were basically provided to the  
14 natural gas plant?

15 MR. CARROLL: I'm going to object to  
16 this line of questioning. We didn't present this  
17 witness on the issue of alternatives. We did have  
18 Mr. Williams earlier today as alternatives witness  
19 who testified to the dual fuel analysis that was  
20 done. And we're well beyond now the scope of the  
21 original testimony of Mr. Caldwell.

22 HEARING OFFICER GEFTER: Your objection  
23 is sustained.

24 BY MR. VARANINI:

25 Q Mr. Caldwell, do you know of any PG&E

1 National projects in the east that have dual fuel?

2 MR. CARROLL: Relevancy.

3 HEARING OFFICER GEFTER: The objection  
4 is sustained.

5 MR. CALDWELL: Yes.

6 MR. VARANINI: Thank you very much.

7 (Laughter.)

8 MR. VARANINI: I have no further  
9 questions.

10 HEARING OFFICER GEFTER: Duke.

11 MS. LUCKHARDT: No questions.

12 HEARING OFFICER GEFTER: Ms. Duncan.

13 MS. DUNCAN: No questions.

14 MR. CLAYCOMB: Save Our Bay, none.

15 HEARING OFFICER GEFTER: Thank you, Mr.  
16 Caldwell.

17 Are there any --

18 MS. DUNCAN: Ms. Gefter, I have a  
19 procedural question. On my air quality testimony  
20 you said that was exhibit 70. It's actually  
21 exhibit 83.

22 HEARING OFFICER GEFTER: All right,  
23 thank you. I'm sorry I missed that.

24 MS. DUNCAN: So I'd like to have that  
25 put on record.

1                   HEARING OFFICER GEFTER: You would like  
2                   that received into evidence?

3                   Is there any objection to exhibit 83  
4                   being received into the record?

5                   MR. CARROLL: No.

6                   HEARING OFFICER GEFTER: Okay.

7                   MR. CARROLL: One additional procedural  
8                   matter --

9                   HEARING OFFICER GEFTER: Well, let's go  
10                  through this, unless it's with respect to 83.  
11                  Hearing no objection to exhibit 83 being received  
12                  into evidence, it is now part of the record.  
13                  Exhibit 83.

14                  MS. DUNCAN: Thank you.

15                  HEARING OFFICER GEFTER: Okay, Mr.  
16                  Carroll.

17                  MR. CARROLL: I raise it now because  
18                  it's responsive to Ms. Duncan's comments. We did  
19                  submit written responses to Ms. Duncan's comments,  
20                  including on the distributed generation. It was a  
21                  portion of exhibit 77, and we realized at this  
22                  point that we did not enter that portion of 77  
23                  into the record.

24                  At some point, it doesn't need to be  
25                  today or now, we would put Mr. Chilson back on the

1 stand to enter that in. And we just wanted to  
2 make sure that our responses to the issues that  
3 had been raised by Ms. Duncan are entered into the  
4 record.

5 HEARING OFFICER GEFTER: All right. I  
6 understand that the entire exhibit 77 will be  
7 moved into the record at the conclusion of all the  
8 hearings.

9 MS. LUCKHARDT: So does that include or  
10 not include Mr. Caldwell's testimony?

11 MR. CARROLL: Does not.

12 MS. LUCKHARDT: Prefiled. Does not.

13 MR. CARROLL: Does not.

14 HEARING OFFICER GEFTER: So we will take  
15 that out of exhibit 77?

16 MR. CARROLL: That's correct.

17 HEARING OFFICER GEFTER: All right.

18 MS. LUCKHARDT: And then Mr. Chilson  
19 will respond to responses to Ms. Duncan's data  
20 request, is that correct? Will be offering that  
21 evidence?

22 MR. CARROLL: Generally the answer to  
23 that is yes. And I haven't had a chance to look  
24 at HD-2, which is the one that you're concerned  
25 about. So there may be somebody else who's better

1 prepared to answer that. I just need to look at  
2 what the topic of that particular response was.

3 But, generally yes, Mr. Chilson will  
4 respond to any questions about the responses to  
5 Ms. Duncan.

6 MS. LUCKHARDT: Okay, I'm just trying to  
7 figure out who.

8 HEARING OFFICER GEFTER: All right, at  
9 this point I don't believe there are any more air  
10 quality witnesses.

11 MR. VARANINI: Yes, ma'am.

12 HEARING OFFICER GEFTER: You have  
13 another witness?

14 MR. VARANINI: We'd like to recall Gary  
15 Rubenstein to rebut the testimony of Mr. Caldwell.

16 HEARING OFFICER GEFTER: How much time  
17 will it take?

18 MR. VARANINI: We'll have to ask him.

19 HEARING OFFICER GEFTER: Okay, off the  
20 record.

21 MR. VARANINI: Five minutes.

22 (Off the record.)

23 HEARING OFFICER GEFTER: Back on the  
24 record.

25 MR. VARANINI: Cabrillo calls Gary

1 Rubenstein as a rebuttal witness to the testimony  
2 of Mr. James Caldwell. He's been previously sworn.  
3 Whereupon,

4 GARY RUBENSTEIN  
5 was recalled as a witness herein and having been  
6 previously duly sworn, was examined and testified  
7 further as follows:

8 DIRECT EXAMINATION

9 BY MR. VARANINI:

10 Q Mr. Rubenstein, you heard Mr. Caldwell's  
11 testimony, did you not?

12 A Yes, I did.

13 Q And do you have a response to his  
14 testimony?

15 A Yes, I do. I'll just touch on the  
16 highlights.

17 Mr. Caldwell indicated that he had  
18 concerns about at least three aspects of the  
19 calculations presented in my written testimony.  
20 First he referred to what he called the SOx  
21 emissions discrepancy for Otay Mesa that was a  
22 reference to the discussion that I had with Mr.  
23 Carroll about the difference in SOx emissions  
24 factors for Otay Mesa as compared with the Encina  
25 and South Bay boilers.

1           As I had indicated earlier to Mr.  
2       Carroll in response to a question on that subject,  
3       the discrepancy is that the emissions estimates  
4       prepared by the applicant for Otay Mesa were based  
5       on a sulfur content much higher than typical  
6       natural gas sulfur levels in southern California.

7           The Otay Mesa number was high. It's not  
8       that the other numbers were low. And I did not  
9       use the Otay Mesa SOx emission factor in any of my  
10      calculations.

11          Second, Mr. Caldwell indicated that the  
12      reference I made to emissions estimates except for  
13      NOx representing my best judgment were somehow  
14      inconsistent with the footnotes. I don't see the  
15      inconsistency, and he didn't express specifically  
16      what that inconsistency might be.

17          Third, Mr. Caldwell suggested that the  
18      generation total that I used in all of my  
19      analyses, which is 32,700 megawatt hours in a day  
20      total for the Encina and South Bay plants were  
21      somehow incredible to him.

22          As noted in footnote 20 on page 8 of my  
23      testimony, that is the actual gross generation  
24      from those two plants on August 22, 1998, no  
25      matter how incredible that might be to

1       Mr. Caldwell. That's what the actual number was.  
2       And that was not an isolated case.

3               We had reviewed, in response to request  
4       from the San Diego Air District, peak day  
5       generation for the period between January 1, 1995  
6       and August 15, 2000. And the value of 32,700  
7       megawatt hours in a day is not an isolated case.  
8       There are a number of days throughout that period,  
9       peak generation days, in which those units were  
10      running very hard. And running very hard for 24  
11      hours.

12             Next, Mr. Caldwell indicated that  
13      because of the number of conservatisms he believed  
14      that my emissions estimates were overstated by a  
15      factor of five to ten. He presented no backup for  
16      that. I presented a number of analyses before  
17      this Commission in a variety of different  
18      proceedings. I can't respond to anything  
19      specifically because he didn't back his claim up.  
20      But suffice it to say my conclusion is that that  
21      claim is ludicrous.

22             Finally, there was an extensive  
23      discussion by Mr. Caldwell about how you could go  
24      to a hardware store to pick up enough parts to  
25      convert the Encina and South Bay power plants so



1       that they could run on distillate fuel instead of  
2       residual fuel oil.

3               Rather than having a debate between  
4       consultants, the plant manager for the South Bay  
5       Power Plant is right here. And if the Committee  
6       does wish to receive additional information on  
7       that topic specifically, we could have him come up  
8       and talk to you about it. I can assure you it's a  
9       lot more than the parts you can find in a hardware  
10      store.

11             That concludes my comments.

12             MR. VARANINI: He's available for  
13      recross.

14             HEARING OFFICER GEFTER: Do you have  
15      cross of the witness?

16             MR. CARROLL: Just a couple of  
17      questions.

18                       CROSS-EXAMINATION

19      BY MR. CARROLL:

20             Q     The 32,700 number that you referred to,  
21      has that ever occurred with Otay Mesa Generating  
22      Project in the system?

23             A     Obviously not.

24             Q     Has that ever occurred during a natural  
25      gas curtailment?

1           A     There have been no natural gas  
2     curtailments to the best of my knowledge between  
3     January 1st of '95 and August 15, 2000. And that  
4     was the only period I reviewed.

5                 So during that period, no, it did not  
6     occur in conjunction with a natural gas  
7     curtailment.

8                 MR. CARROLL: Thank you.

9                 HEARING OFFICER GEFTER: Where did you  
10    get that information, Mr Rubenstein, with respect  
11    to curtailment?

12                MR. RUBENSTEIN: We had, at the request  
13    of the Air District, collected daily operation  
14    data and fuel consumption data for those plants  
15    from January 1, 1995 to the present.

16                And I'm not comfortable extrapolating  
17    before that date.

18                HEARING OFFICER GEFTER: The question is  
19    did you get that information from the Encina  
20    Plant, itself, its records? Or from the Air  
21    District's records?

22                MR. RUBENSTEIN: We got that information  
23    from the plant records maintained by both the  
24    Encina and South Bay Plants.

25                HEARING OFFICER GEFTER: So that

1 information also indicates that South Bay has also  
2 not been curtailed since '95?

3 MR. RUBENSTEIN: Yes.

4 HEARING OFFICER GEFTER: Does staff have  
5 any questions for the witness?

6 MR. OGATA: No.

7 HEARING OFFICER GEFTER: Duke? Do you  
8 have questions of the witness?

9 MS. LUCKHARDT: I don't have any  
10 questions of the witness.

11 HEARING OFFICER GEFTER: All right,  
12 thank you. The witness may be excused, thank you.

13 MR. CARROLL: One additional procedural  
14 point. You had asked us to raise the issue of  
15 exhibits 89 and 90 in connection with Mr.  
16 Caldwell. And we wanted to make sure we were  
17 going to do that.

18 HEARING OFFICER GEFTER: Is there  
19 objection to the receipt into evidence of exhibits  
20 89 and 90?

21 Hearing no responses, exhibits 89 and 90  
22 are received into the record. Thank you.

23 We also understand there is a member of  
24 the public who wanted to address us on air  
25 quality. Before we go on to the next topic, if

1       you'd come forward at this time. Sit at the  
2       microphone and tell us your name and the  
3       organization that you're with.

4               MS. McCUTCHAN: Sure. Hello, everybody.  
5       My name is Melanie McCutchan; I'm here on behalf  
6       of the Environmental Health Coalition. We're a  
7       public health and environmental justice  
8       organization that has been working in San Diego  
9       for 20 years now.

10              My comments are directly specifically to  
11       the PM10 mitigation package. Let me say first  
12       that our organization is very pleased that the  
13       mitigation is going to target combustion sources  
14       and is going to do so in the area of the plant.  
15       Both the applicant and staff have been supportive  
16       of that idea, and I appreciate that.

17              Environmental Health Coalition's concern  
18       is how the mitigation fee has been determined.  
19       And our concern is that it doesn't really reflect,  
20       it's not really connected to health impacts.

21              In the sense that, you know, ideally the  
22       mitigation should be roughly proportional to the  
23       health impacts, the health benefits from the  
24       mitigation should be roughly proportional to any  
25       health costs created by Otay Mesa's emissions.

1                   And there were certain assumptions that  
2           we were willing to go with, and in order to accept  
3           a less than ton-for-ton tradeoff. And that  
4           assumption was that the diesel PM10 reductions  
5           would provide ancillary health benefits because  
6           there's so many carcinogens and mutagens in the  
7           diesel particular matter that aren't in the Otay  
8           Mesa's particulate matter.

9                   Also it's been talked about that that  
10          mitigation is going to be occurring at receptor  
11          level, and to sensitive populations. Children are  
12          going to be the -- are going to have their  
13          exposure reduced.

14                  And our concern, however, is that we  
15          wanted to have some assurance so that, you know,  
16          the Committee and all parties involved could be  
17          confident that the mitigation really was roughly  
18          proportional to the Otay Mesa's emissions.

19                  The applicant performed a study on  
20          cancer risk and found that diesel PM appears to be  
21          approximately 100 times more dangerous in terms of  
22          cancer risk than the Otay Mesa's emissions.

23                  And both Environmental Health Coalition  
24          and American Lung Association asked that a study  
25          be done on the noncancer risks associated with

1       Otay Mesa's 170 tons of PM emissions, to have some  
2       sort of idea of how much diesel -- reductions in  
3       diesel emissions should be required.

4               And that was never done by staff or the  
5       applicant. And I think that staff, in particular,  
6       was concerned about trying to develop some sort of  
7       ratio of, you know, diesel reductions to mitigate  
8       for the Otay Mesa's combustion source reductions.  
9       And I understand that because the health  
10      benchmarks are subject to uncertainty.

11              But my concern is that for future cases  
12      there be a better attempt at trying to determine  
13      what the health impacts really are of some of  
14      these mobile and particular diesel mobile emission  
15      reduction offsets are, so that the public and  
16      everybody involved can be more confident that the  
17      mitigation really is appropriate.

18              Specifically related to this project,  
19      however, we are concerned that staff has -- the  
20      way that staff came up with their \$1.7 million  
21      mitigation sum was basically because there was no,  
22      it was very difficult to determine an appropriate  
23      mitigation sum based on the greater health -- or  
24      the health costs, the relationship between the  
25      health costs of Otay Mesa's emissions and the

1 health benefits of the diesel reductions.

2 In the face of that uncertainty you  
3 might want to go for a one-to-one mitigation. But  
4 because that would be cost prohibitive in the Otay  
5 Mesa area for the applicant to do that, staff went  
6 through another process to determine that  
7 mitigation fee. And that was to -- and I believe  
8 determine what would be an economically fair  
9 mitigation fee.

10 And to do that staff took the statewide  
11 average cost of a PM10 ERC, emission reduction  
12 credit, and multiplied that out by the number of  
13 tons. And that's where the \$1.7 million came  
14 from.

15 And I'm just concerned that staff has  
16 receded from that position and compromised at \$1.2  
17 million. And I urge the Committee to require the  
18 full \$1.7 million mitigation fee.

19 One of the things that the applicant has  
20 said should be taken into account for reasons why  
21 that mitigation fee should not be the entire \$1.7  
22 million is that a cheaper mitigation option of  
23 road paving was available.

24 But that argument has no grounds because  
25 that road paving mitigation option was never

1 considered appropriate by staff, because of new  
2 information about the difference between the  
3 health impacts, of course, and fine particulate  
4 matter.

5 So, just to reiterate, I urge the  
6 Committee to demand the entire \$1.7 million  
7 mitigation fee.

8 Thank you. That's all.

9 PRESIDING MEMBER LAURIE: Thank you,  
10 ma'am.

11 HEARING OFFICER GEFTER: Thank you. Are  
12 there any other public comments? Yes. Please say  
13 your name and the organization you represent.

14 MS. CONCHA-GARCIA: Susanna Concha-  
15 Garcia representing the American Lung Association.

16 I would like to respectfully say that we  
17 agree and we support the Environmental Health  
18 Coalition's request for the full \$1.7 million  
19 mitigation fee.

20 As part of that, we feel very strongly  
21 that as part of the permitting process that there  
22 be public input as to how this is to be allocated  
23 and be localized to the South Bay area.

24 It's very important because these are  
25 the residents that are going to be impacted by the



1 excess PM10 emissions.

2 The other thing is that there have been  
3 suggestions as to depositing this money with APCD.  
4 And that we have similar criteria, Carl Moyer, et  
5 cetera. However we want any criteria that is used  
6 to determine how this money should be spent still  
7 preference the residents in the South Bay area.

8 We've discussed things during numerous  
9 PM10 mitigation workshops having to do with  
10 lawnmower exchanges, CNG bus purchases, airport  
11 field equipment, you know, be electrified or run  
12 by CNG.

13 To me all those options are still  
14 available. We, however, do support the use of the  
15 fees for purchases of school buses, et cetera,  
16 because they affect -- for those school buses in  
17 the South Bay area, because they would help to  
18 mitigate some of the health effects of the  
19 children living in the area or traveling in the  
20 area.

21 And that is -- and to reiterate Holly's  
22 and Melanie's and my concern, you know, we still  
23 haven't heard any analysis of what noncancerous  
24 health effects there are to the region by PM10,  
25 and what that's going to cost the residents now

1 and the future residents, especially with a power  
2 plant lifespan of at least 30 years.

3 So, we're not sure that even the \$1.7  
4 million is even a fair amount at this point.

5 HEARING OFFICER GEFTER: Thank you.  
6 We're going to hear public health testimony in a  
7 little while about noncancer health effects.

8 There's another person from the public  
9 who would like to address us? Thank you. Please  
10 say your name for the record and tell us what  
11 organization you represent.

12 MR. TALWAR: My name is Mahesh Talwar.  
13 I'm President and CEO of OceanAir Fuels -- we make  
14 and manufacture bio fuels. Bio fuels are made  
15 from grease collected from McDonald's and whatnot.  
16 And basically it's used as a diesel in any engine.  
17 No change required whatsoever.

18 We currently produce 10 million gallons  
19 a year bio fuel. It is being supplied 220 garbage  
20 trucks in San Jose, so it is coming to west coast.

21 So with that as a background I wanted to  
22 address four issues very quickly here. There's a  
23 lot of talk and discussion today about curtailment  
24 and whatnot of natural gas and use of fuel oil.

25 I want to bring another option to the

1 Committee and to the applicant, as well, which is  
2 to use a bio fuel. We can supply it. We have the  
3 ability to supply it. It's got no sulfur, no  
4 toxic emissions to worry about. Because of no  
5 sulfur there is very very minimal PM10 emissions  
6 to worry about by the use of that fuel.

7 So it will make the use of that fuel as  
8 a backup a very attractive solution. And it can  
9 be used with SCR.

10 The second point I wanted to bring to  
11 your attention is the use of bio fuel for use in  
12 construction equipment, as a construction  
13 mitigation.

14 It's a very appropriate fuel. No  
15 infrastructure changes required, no diesel engine  
16 modification required. So I'd like to see that  
17 included as an option, mitigation option for PM10.

18 Third, I agree with the previous two  
19 speakers, the 1.7 and 1.2 or whatever the amount  
20 comes out to be, there's a lot of talk about using  
21 that for CNG school buses, giving it to the  
22 District and whatnot, which is fine and  
23 appropriate. But you want to make sure there are  
24 options available that this can be used for other  
25 PM10 reduction approaches like they use a bio fuel

1 or any other option that may be out there. So,  
2 we'd like to see language included addressing that  
3 issue, as well.

4 Lastly, I wanted to address the whole  
5 issue of this PM10 mitigation and the so-called --  
6 I do not believe it's in the best public interest  
7 and best interests for the Committee and the  
8 Commission, as a public body, to look at any  
9 option which is geared towards -- when there are  
10 other options out there.

11 Specifically I bring to your attention  
12 the analysis that was done for road paving. I  
13 know that there has been a lot of discussion and  
14 talk about the use of CNG school buses and whatnot  
15 that can reduce toxic emissions and carcinogenic  
16 pollutants.

17 Under CEQA guidelines there is no  
18 requirement to do that, as part of PM10  
19 mitigation. Those are ancillary benefits. We are  
20 looking at PM10 mitigation as part of this  
21 project, and therefore that's where the issue  
22 needs to be focused, what is bringing the PM10  
23 reduction.

24 We are looking at -- a year, the number  
25 I got off the top of my head, PM10 reduction out

1 of the option that is to be used when the money is  
2 used for certain mobile source emission reduction  
3 programs.

4 The road paving, according to my  
5 calculations, besides the PM10, the PM10 benefit  
6 can give even PM2.5, 20, 30 tons. So obviously it  
7 will mitigate -- it will meet the intent of CEQA.  
8 And I would urge, rather than looking at --  
9 pollute system out there, look at very seriously  
10 what the intent of the law is. And road paving is  
11 a viable option. It's in the best public  
12 interests.

13 Thank you.

14 PRESIDING MEMBER LAURIE: Thank you.

15 HEARING OFFICER GEFTER: Thank you.

16 Okay.

17 COMMISSIONER PERNELL: Excuse me, I have  
18 a question.

19 MR. TALWAR: Sure.

20 COMMISSIONER PERNELL: How many barrels  
21 of fuel can you make a day with your business?

22 MR. TALWAR: I'll have to calculate  
23 barrels and what -- we have 10 million gallons a  
24 year plant capacity. So, 42 --

25 SPEAKER: Ten million gallons of --

1                   MR. TALWAR: Yeah, 42 gallons to a  
2                   barrel, so whatever that comes out to be.

3                   COMMISSIONER PERNELL: Okay, that's  
4                   fine. Thank you.

5                   HEARING OFFICER GEFTER: Thank you.  
6                   With respect to the PM10 mitigation plan,  
7                   apparently the staff and the applicant have come  
8                   to an agreement on, my understanding was that the  
9                   District would monitor the funds, and allocate  
10                  them to whichever program the parties decide upon.

11                  How many school buses can be retrofitted  
12                  with \$1.2 million. I'd ask Mr. Moore, do you have  
13                  an answer to that?

14                  MR. MOORE: I have a rough idea; I'm not  
15                  really an expert on that. \$1.2 million, maybe 10  
16                  or 12.

17                  HEARING OFFICER GEFTER: Mr. Layton.

18                  MR. LAYTON: There's two components in  
19                  the lower emission school bus program. This is  
20                  covered in the FSA, but since we bring it up here,  
21                  the program recently passed by the Legislature,  
22                  and the ARB is getting ready to adopt it this  
23                  December --

24                  HEARING OFFICER GEFTER: Yeah, we're  
25                  familiar with the program. I just wanted to know

1       how many buses you believe could be retrofitted --

2               MR. LAYTON: Well, it depends, well,  
3       retrofit, replace probably about 12, because each  
4       bus the program provides \$100,000; the school  
5       district has to provide the rest. And a CNG bus  
6       costs approximately \$140,000; clean diesel maybe  
7       125,000.

8               A retrofit, which is our preferred  
9       option, where you actually go back and take an  
10      existing school bus and put on an oxidizing soot  
11      filter or a catalyze diesel particulate filter,  
12      that may cost anywhere from 3000 to 6000.

13              ARB believes the number is going to be  
14      below 5000 per school bus. So, 1.2 million would  
15      probably provide about 200 buses retrofit.

16              HEARING OFFICER GEFTER: So the retrofit  
17      would be a lot more cost effective.

18              MR. LAYTON: It would also go after more  
19      PM10 than bus replacement.

20              HEARING OFFICER GEFTER: All right.

21              MR. LAYTON: Our main goal here is to  
22      get the money out on the street. We have  
23      expressed preferences in the condition that we're  
24      rewritten, and the applicant has looked at and  
25      agreed to.

1           We do express those preferences that the  
2       school districts in the area, there's four of them  
3       which I mentioned earlier, do have the first right  
4       of refusal for the 1.2 million. And after that it  
5       can go anywhere.

6           But we would like to get the money out  
7       on the street as opposed to having it sit in the  
8       District coffers. They are also interested in  
9       spending the money, too.

10          But we look at this PM10 mitigation  
11       proposal as a cumulative effect. The sooner we  
12       retrofit the buses the sooner the technology gets  
13       brought forward. More people will look at the  
14       technology and see that it works, and also adopt  
15       it, as well.

16          And go after the same money that's there  
17       from the ARB. If the money doesn't get out there  
18       and spent, then people do not adopt the  
19       technology.

20          HEARING OFFICER GEFTER: Thank you. The  
21       next topic -- thank you, Mr. Layton, we're going  
22       to move on because we're running out of time this  
23       afternoon.

24          MR. LAYTON: Good.

25          HEARING OFFICER GEFTER: Our next topic



1 is public health --

2 (Laughter.)

3 HEARING OFFICER GEFTER: -- and does the  
4 applicant have a witness on public health?

5 MR. CARROLL: Yes, the applicant calls  
6 Mr. John Koehler.

7 HEARING OFFICER GEFTER: Mr. Koehler  
8 will be sworn by the reporter.

9 Whereupon,

10 JOHN KOEHLER  
11 was called as a witness herein, and after first  
12 having been duly sworn, was examined and testified  
13 as follows:

14 DIRECT EXAMINATION

15 BY MR. CARROLL:

16 Q Mr. Koehler, could you please state your  
17 name for the record.

18 A My name is John Koehler.

19 Q And where are you currently employed?

20 A URS Corporation.

21 Q And could you please briefly describe  
22 your responsibilities with regard to the Otay Mesa  
23 Generating Project?

24 A With regard to this project I was  
25 responsible for the public health analysis of the

1 project.

2 Q Thank you. And your prepared testimony  
3 which was submitted in this matter identifies  
4 several exhibits which you intended to sponsor,  
5 exhibit 1 is section 5.16 of the AFC covering  
6 public health; exhibit 32, which is response to  
7 comments on the health risk assessment completed  
8 for the project; and exhibit 33, which addresses  
9 potential acute health risks.

10 Are you sponsoring those documents  
11 today?

12 A Yes, I am, exhibits 32 and 33 were  
13 responses to the Air District comments on the  
14 health risk assessment.

15 Q Thank you for that clarification. Would  
16 you briefly summarize your testimony.

17 A Certainly. We looked at toxic air  
18 pollutant emissions from the proposed project,  
19 calculated using the California Air Toxics  
20 Emission Factors, C-A-T-E-F, sometimes referred to  
21 as CATEF.

22 We ran an air dispersion model to  
23 calculate ground level concentrations. Then  
24 applied CalEPA toxicity factors to those maximum  
25 predicted concentrations.

1                   And this analysis showed that there  
2                   would be no significant public health impacts.  
3                   And the project would comply with applicable  
4                   regulatory criteria.

5                   Q     Thank you. Does that conclude your  
6                   testimony?

7                   A     Yes, it does.

8                   MR. CARROLL: Thank you. Mr. Koehler is  
9                   available for cross-examination.

10                  HEARING OFFICER GEFTER: Mr. Koehler,  
11                  before we go to cross-examination, I have a  
12                  question. It was raised by the members of the  
13                  public who spoke earlier.

14                  They were concerned about noncancer  
15                  health effects of PM10. Is that something that  
16                  you looked at?

17                  MR. KOEHLER: Not specifically. I  
18                  looked at individual compounds that were predicted  
19                  by the California Air Toxic Emission Factors.  
20                  Some of those are particulate borne compounds.

21                  So for those compounds they were  
22                  directly included in the noncancer health risk  
23                  analysis.

24                  Otherwise, I'd have to refer back to the  
25                  air quality analysis, which did a PM10 analysis,

1 and did a comparison against regulatory criteria  
2 with respect to PM10.

3 HEARING OFFICER GEFTER: And, Mr.  
4 Koehler, was your analysis incorporated into the  
5 final determination of compliance of the Air  
6 District?

7 MR. KOEHLER: Yes, it was.

8 HEARING OFFICER GEFTER: Thank you.  
9 Okay, does staff have cross-examination of the  
10 witness?

11 MR. OGATA: Staff has no questions.

12 HEARING OFFICER GEFTER: Does Cabrillo  
13 have cross-examination?

14 MR. VARANINI: No.

15 HEARING OFFICER GEFTER: Does Duke have  
16 cross-examination?

17 MS. LUCKHARDT: No.

18 HEARING OFFICER GEFTER: Ms. Duncan, do  
19 you have cross-examination?

20 MS. DUNCAN: No.

21 HEARING OFFICER GEFTER: Mr. Claycomb?

22 MR. CLAYCOMB: Yes, ma'am, this is the  
23 big one.

24 (Laughter.)

25 HEARING OFFICER GEFTER: You need to

1       move the microphone next to you, both microphones,  
2       and speak into them.

3               PRESIDING MEMBER LAURIE:   Before you  
4       start your questions, I'd ask you to distinguish  
5       between the statement that you want to make and  
6       your questions of the witness, so we understand  
7       that you want to make your own statement, and  
8       you'll have an opportunity to do that.

9               This is your opportunity to specifically  
10       question the witness on his testimony.  We're  
11       going to ask that your questions be limited to his  
12       testimony.  Okay?

13              MR. CLAYCOMB:  Well, I think I was  
14       planning to do that.  Of course, this relates to  
15       exhibit 71, all my testimony is included in  
16       exhibit 71.

17              And it would be helpful if the staff  
18       witness could listen to this, too, because I would  
19       like to mention a couple of things in exhibit 71.

20              HEARING OFFICER GEFTER:  Okay, well, you  
21       need to again frame the question for the witness.

22              MR. CLAYCOMB:  Well, I'm going to get to  
23       the question, but I want to lay a little --

24              HEARING OFFICER GEFTER:  You can make  
25       your statement later.  Ask the questions first to

1 the witness.

2 MR. CLAYCOMB: All right.

3 CROSS-EXAMINATION

4 BY MR. CLAYCOMB:

5 Q In your analysis did you consider the  
6 impact of global warming on public health?

7 A No, I did not.

8 Q And would you agree that carbon dioxide  
9 is a major global warming gas?

10 A Carbon dioxide?

11 Q Dioxide.

12 A Carbon dioxide is one of the greenhouse  
13 gases. And there's been much research in this  
14 area, and the area is somewhat inconclusive among  
15 the experts. However, I would agree that CO2 is  
16 considered one of the greenhouse gases, yes.

17 Q Well, would you consider it the major  
18 greenhouse gas?

19 A In terms of quantity of emissions it is  
20 a significant greenhouse gas from combustion of  
21 fossil fuels, yes.

22 Q Well, in terms of its overall effect on  
23 global warming, then, would you consider it the  
24 major greenhouse gas?

25 A Well, again, if we're getting back to my

1 area of testimony and what I did for this project,  
2 that's outside of my area of scope for this  
3 project. I was looking at air toxic emission  
4 factors from the combustion of natural gas, and  
5 those localized impacts in the area of Otay Mesa.

6 Q Well in the final staff assessment  
7 referred to the California Health and Safety Code,  
8 41700, and by the definition contained in that  
9 section, would it be your opinion that carbon  
10 dioxide would fit as one of those substances that  
11 should not be discharged?

12 A Could you repeat what section you're  
13 talking about?

14 Q 41700.

15 A Oh, of the Code?

16 Q Of the Health and Safety Code.

17 A Okay, could you restate your question?

18 Q Would you see any reason why carbon  
19 dioxide should not be considered a substance that  
20 should not be emitted under the Code?

21 A Okay, --

22 MR. CARROLL: Let me just interrupt.

23 HEARING OFFICER GEFTER: Do you have an  
24 objection?

25 MR. CARROLL: I have an objection, I'm

1 not sure that Mr. Koehler is familiar with the  
2 code section 41700. If he is, he's free to answer  
3 the question. But, I think it's a little bit  
4 outside of his area of expertise. But if he knows  
5 the answer to it, he's welcome to answer it.

6 MR. CLAYCOMB: Well, I can read the  
7 section. I've got it right here.

8 MR. KOEHLER: Okay, well, I doubt if you  
9 want to read that, but generally that Health and  
10 Safety Code section refers to, from what I  
11 understand, the establishment of air quality  
12 programs and regulated pollutants are established  
13 under that program. And this is not one of the  
14 ones that we're talking about.

15 But, go ahead.

16 BY MR. CLAYCOMB:

17 Q Well, let me read this: No person shall  
18 discharge from any source whatsoever such  
19 quantities of air contaminants or other material  
20 which cause injury, detriment, nuisance or  
21 annoyance to any considerable number of persons or  
22 to the public or which endanger the comfort,  
23 repose, health or safety of any such persons or  
24 the public or which cause or have a natural  
25 tendency to cause injury or damage to business or



1 property.

2 A Okay, and I'm not an attorney, but that  
3 section of the Health and Safety Code goes on to  
4 establish the concept of air districts, and  
5 underneath those air districts they adopt programs  
6 to address that general language in the code.

7 And I guess I would have to defer to the  
8 District on that. This project analyzed all  
9 applicable air contaminants pursuant to those  
10 regulatory requirements.

11 Q Maybe I'll ask this question one more  
12 time slightly differently. I would say that that  
13 description of a contaminant or other material  
14 which causes all those things would fit carbon  
15 dioxide --

16 HEARING OFFICER GEFTER: All right,  
17 well, the --

18 BY MR. CLAYCOMB:

19 Q -- because of its impact on global  
20 warming and the effects on public health of global  
21 warming.

22 HEARING OFFICER GEFTER: Certainly, Mr.  
23 Claycomb, you can argue that. The witness has  
24 already answered the question. That was his  
25 answer.

1                   MR. CLAYCOMB: Well, he said it doesn't  
2                   apply, then?

3                   HEARING OFFICER GEFTER: Well, you heard  
4                   his answer. And you have a different view, which  
5                   you can argue to us later. Would you ask him  
6                   another question?

7                   BY MR. CLAYCOMB:

8                   Q     Well, if carbon dioxide doesn't fit in  
9                   that section, as a prohibitive substance, then  
10                  where in the California statutes would it be  
11                  allowed as an emitted substance?

12                  HEARING OFFICER GEFTER: Mr. Koehler,  
13                  can you answer that question?

14                  MR. KOEHLER: No. I'd have to say that  
15                  really was beyond the purview of my analysis, so I  
16                  can't answer that question.

17                  MR. CLAYCOMB: Okay, that's all.

18                  HEARING OFFICER GEFTER: That's all your  
19                  questions?

20                  MR. CLAYCOMB: Yes.

21                  HEARING OFFICER GEFTER: Do you have any  
22                  redirect of your witness?

23                  MR. CARROLL: No, we don't.

24                  HEARING OFFICER GEFTER: Thank you. You  
25                  can stay there, Mr. Koehler, we'll go on to

1 staff's witness on public health. And the witness  
2 needs to be sworn.

3 Whereupon,

4 OBED ODOEMELAM

5 was called as a witness herein, and after first  
6 having been duly sworn, was examined and testified  
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. OGATA:

10 Q Could you please state your name for the  
11 record?

12 A My name is Obed Odoemelam.

13 Q Dr. Odoemelam, could you please tell us  
14 what is your job title at the Energy Commission?

15 A I am Staff Toxicologist in the  
16 Environmental Division.

17 Q What are your duties?

18 A I help develop advice on health impacts  
19 and I was part of the interagency committee group  
20 that developed the health risk assessment  
21 guidelines that I used in this analysis.

22 Q Do you have before you the testimony in  
23 public health that you prepared?

24 A Yes, I do.

25 Q And that's part of the final staff

1       assessment, is that correct?

2           A     Yes, it is.

3           Q     Do you have any changes or corrections  
4       that you'd like to make at this time?

5           A     No, I don't.

6           Q     Would you please summarize your  
7       testimony for us very briefly?

8           A     I assessed the proposed project with  
9       respect to both the criteria and noncriteria  
10      pollutants. I focused mostly on the noncriteria  
11      pollutants, which are the air toxics with respect  
12      to the potential for cancer or noncancerous risks.

13                The analysis and the assessment was made  
14      using established criteria. And I found that the  
15      emissions at the levels projected would not cause  
16      a significant cancer or noncancer health risks.

17                But with respect to the criteria  
18      pollutants, which are normally addressed in the  
19      air quality section, when we have a problem area,  
20      as in the San Diego area where you have existing  
21      levels that are higher than established for air  
22      quality standards, we do the same risk assessment  
23      so that we can establish for our air quality staff  
24      the background level that will allow for them to  
25      assess the need for mitigation, the adequacy of

1 mitigation, and the need for specific conditions  
2 for certification.

3 Q Does that conclude your testimony?

4 A Yeah, that's the end of my testimony.

5 MR. OGATA: I have no further questions.

6 He's available for cross-examination.

7 HEARING OFFICER GEFTER: Does the

8 applicant have cross-examination?

9 MR. CARROLL: No, we do not.

10 HEARING OFFICER GEFTER: Does Cabrillo

11 have cross?

12 MR. VARANINI: No.

13 HEARING OFFICER GEFTER: Ms. Duncan.

14 MS. DUNCAN: Yes, I do.

15 CROSS-EXAMINATION

16 BY MS. DUNCAN:

17 Q On page 30, the last page of your  
18 report, under conclusions, that last sentence,  
19 that because of existing problems at the state  
20 level with ambient air quality that there would be  
21 a need for mitigation of any pollutant that adds  
22 to that situation, did you hear the PM10  
23 mitigation proposal here today? Were you here and  
24 heard that?

25 A Yes. I consulted with staff all along

1 with respect to the limitations of the mitigation  
2 process, and when it's adequate. And the  
3 potential health impacts of failure to mitigate,  
4 and all these in the context of limitations of the  
5 health effects information.

6 So, the mitigation plan I helped  
7 establish with our staff.

8 Q The 1.7 million that was proposed? Or  
9 the 1.2 million that I believe we're at now?

10 A The 1.7 million was staff's best effort  
11 to arrive at some defensible mechanism for  
12 establishing the parameters for the cost of such  
13 mitigation. Again, in the context of the total  
14 universe of uncertainty in the analysis process.

15 Q Are you involved in this sort of process  
16 on other projects before the Commission statewide?

17 A You mean trying to identify mitigation  
18 and the need for mitigation --

19 Q Yes.

20 A -- and the adequacy of mitigation?

21 Q Yes.

22 A Yes. In all areas in which we have  
23 problem -- I work with staff again. The most  
24 important thing is to understand the limitation of  
25 the health effects information, because there's

1 not as much specificity in the health effects  
2 information as the general public might believe  
3 sometimes.

4 So, we try to identify this limitations  
5 and make recommendations, again in light of the  
6 uncertainty in the underlying science.

7 Q In your testimony and in your statement  
8 in the FSA, you seek to defer to air quality,  
9 which was Mr. Layton, in terms of determining the  
10 mitigation. You did not develop it, yourself.

11 In your opinion, in your professional  
12 opinion does this PM10 mitigation package  
13 accurately reflect other packages in other  
14 projects statewide?

15 HEARING OFFICER GEFTER: Okay, first of  
16 all, Ms. Duncan, Mr. Odoemelam just said that he  
17 participated in developing the PM10 mitigation  
18 plan, so that part of your statement was  
19 misstating his testimony.

20 But you may continue to ask the rest of  
21 your question.

22 MS. DUNCAN: Okay, let me provide the  
23 foundation.

24 BY MS. DUNCAN:

25 Q In Matt Layton's testimony he said

1 elsewhere in the state PM10 generally tends to be  
2 offset on a ton-per-ton basis.

3 For some reason that's not happening  
4 here in San Diego. And what I'm hearing is  
5 because offsets are not available, that's the only  
6 answer I've been able to come up with so far.

7 So I'm trying to understand if this  
8 particular proposal for PM10 for this project  
9 represents -- is it an equitable project compared  
10 to other PM10 mitigations for other plants  
11 certified by this Commission so far? Is it  
12 similar? Or is it dissimilar?

13 And if it is dissimilar or similar,  
14 please explain how.

15 MR. CARROLL: Object to the question  
16 because it's premised on evidence that's not in  
17 the record. Ms. Duncan stated at the outset that  
18 it was her understanding that PM10 reductions were  
19 not being provided because they were not  
20 available. But I believe that the testimony of  
21 the District earlier --

22 MS. DUNCAN: That's in the FSA for air  
23 quality.

24 MR. CARROLL: I believe the testimony of  
25 the District earlier today was that PM10 offsets



1       were not required -- were not provided because  
2       they're not required under the Air District's  
3       rules.

4               And I don't object to the question, I  
5       just object to the premise on which the question  
6       was based.

7               HEARING OFFICER GEFTER: All right,  
8       misrepresentation of the evidence, which the Air  
9       District had indicated earlier that -- is that  
10      correct, Mr. Moore?

11              MR. MOORE: That's correct.

12              HEARING OFFICER GEFTER: All right.

13              MS. DUNCAN: So we have established on  
14      the record the reason that we were not offsetting  
15      ton-per-ton is because the local Air Pollution  
16      Control District does not require that?

17              MR. MOORE: Our rules do not require any  
18      PM10 offsets for this project. CEC Staff is  
19      requiring mitigation for PM10 in the context of  
20      the CEQA that you're doing for the project.

21              We're willing to serve as a conduit for  
22      the funds that have been proposed for that, but we  
23      have no desire to -- we have no requirement that  
24      PM10 offsets be provided.

25              HEARING OFFICER GEFTER: Thank you.

1       Okay, Ms. Duncan, do you want to ask the witness  
2       another question, or do you want to pursue this  
3       question?

4               MS. DUNCAN:  No, I won't pursue it.  
5       I've got what I want.  Thank you.

6               HEARING OFFICER GEFTER:  All right.  Do  
7       you have another question for the witness?

8               MS. DUNCAN:  No, I'm finished.

9               HEARING OFFICER GEFTER:  Okay, Mr.  
10      Claycomb, you may ask questions.

11               CROSS-EXAMINATION

12      BY MR. CLAYCOMB:

13              Q     Mr. Odoemelam, I think you heard me ask  
14      the questions of the other witness.  Do you have  
15      any knowledge of the potential health impacts of  
16      global warming?

17              A     Yes, I do.  And in listening to what you  
18      asked earlier, one would have to make a  
19      distinction between the pollutants that directly  
20      emitted from the source and cause direct health  
21      effects when exposed.

22                But in case of carbon dioxide, the  
23      impacts are secondary, and the mitigation approach  
24      on the regulatory basis is not set to where, or  
25      beginning to set carbon dioxide specific

1 regulations, except to the extent that they allow  
2 for us to minimize the amount of combustion that  
3 we do. That's efficiency.

4 That is the general framework at this  
5 point. But carbon dioxide, as a direct substance  
6 is not really a toxicant, the kinds of toxicant  
7 that are specified in the section that you  
8 referred to.

9 Now, those substances that I referred to  
10 are listed by the CalEPA so that we have specific  
11 mitigation or controls for them. But carbon  
12 dioxide has not gotten to that level yet. It's  
13 not a direct toxicant.

14 Q Well, could you tell me where in the  
15 statutes then emission of carbon dioxide is  
16 permitted?

17 A It is not permitted, but it's an  
18 unavoidable product of any combustion process.  
19 So, we can't help but have carbon dioxide around.

20 What we know now is that it has indirect  
21 impacts, and as a general agreement that at this  
22 stage all we can do is to the extent possible to  
23 minimize combustion. But we have not developed  
24 any carbon dioxide specific rules to treat carbon  
25 dioxide as a toxic air pollutant.

1           Q     Would that description in 41700 cover  
2     carbon dioxide?

3           A     Not directly, no. For the substances in  
4     there, the CalEPA will list the specific compounds  
5     that have to be assessed as toxic air  
6     contaminants. We have not gotten there with  
7     carbon dioxide at this stage yet.

8           Q     No, I'm talking about just the words in  
9     that section 41700.

10          A     Well, the --

11          Q     I think carbon dioxide could be included  
12     as an air contaminant if you read the definition,  
13     just the English words that are in that  
14     definition.

15          A     I understand that, sir, but I am sure  
16     you know we have what they call the 1807 process,  
17     by which the CalEPA identifies the pollutants that  
18     are specified, each one of them is identified  
19     before it begins to be considered as a toxic air  
20     contaminant.

21                 We're not there yet with carbon dioxide.  
22     It's an indirect -- it has indirect effects and  
23     not the direct impacts that call for direct  
24     controls that are specified for this section.

25                 We're not there yet with carbon dioxide.

1       It's not a direct toxicant.

2               MR. CLAYCOMB: I guess I'll have to give  
3       up on that one, then. Somebody is going to pay  
4       for it eventually.

5               HEARING OFFICER GEFTER: Do you have  
6       another question of the witness?

7               MR. CLAYCOMB: No.

8               HEARING OFFICER GEFTER: Okay. Do you  
9       have any redirect of your witness?

10              MR. OGATA: No, no questions.

11              HEARING OFFICER GEFTER: Okay. Thank  
12       you.

13              Ms. Duncan, do you have any testimony on  
14       public health?

15              MS. DUNCAN: No.

16              HEARING OFFICER GEFTER: Mr. Claycomb, I  
17       know that you want to talk to us about public  
18       health. Would you like to address the Commission,  
19       the Committee?

20                       DIRECT TESTIMONY

21              MR. CLAYCOMB: Well, just a little bit.  
22       I mentioned exhibit 71, everything in there, if  
23       people take a look at it, it would take awhile to  
24       read all of it, but I would call your attention  
25       specifically to that 41700.

1                   And then the fact that in 3913 of the  
2           Public Health and Safety Code it includes, as a  
3           description of pollutant contaminant, it includes  
4           carbon and gases. And certain CO2 is a gas, part  
5           of the time at least.

6                   And the first three pages of part of  
7           that exhibit 71, which is Save Our Bay, Inc.,  
8           Intervenor testimony required as part of  
9           prehearing conference dated October 10th, the  
10          first three pages are making the case that global  
11          warming is a serious problem.

12                  I'd like to add to that today Ms. Duncan  
13          brought in a book, Global Climate Change in  
14          California, was written in 1991. So, people have  
15          been aware of the problem for quite a long time  
16          now. Then there's another book, The Heat Is On,  
17          and that's 1997 copyright.

18                  And today they are discussing how to  
19          implement the Kyoto Treaty which is a carbon  
20          dioxide greenhouse gas emission reduction program,  
21          in The Hague, Netherlands, and the United States  
22          is taking a real beating on it because we're one  
23          of the major -- the major producer of carbon  
24          dioxide, and we're trying to wiggle out of having  
25          to do anything about it.

1                   And California EPA and the U.S. EPA and  
2                   nobody else are doing anything about it. And it's  
3                   time they started. And one man and the Energy  
4                   Commission are not going to solve the problem.

5                   PRESIDING MEMBER LAURIE: Thank you,  
6                   sir.

7                   HEARING OFFICER GEFTER: Thank you.  
8                   Looks like we have actually completed our business  
9                   for today early, before 5:00 p.m.

10                  Mr. Carroll, do you have a question?

11                  MR. CARROLL: Yes, one more thing. We  
12                  did not move exhibits 32 and 33; they were the  
13                  exhibits sponsored by Mr. Koehler into evidence.  
14                  We would ask to do that at this time.

15                  HEARING OFFICER GEFTER: Is there any  
16                  objection to exhibits 32 and 33? Hearing no  
17                  objection, exhibits 32 and 33 are received into  
18                  the record. Thank you.

19                  MR. CARROLL: Thank you.

20                  PRESIDING MEMBER LAURIE: Ms. Gefter, I  
21                  would only note that my flight's not until 8:30,  
22                  so --

23                  (Laughter.)

24                  PRESIDING MEMBER LAURIE: -- we have  
25                  plenty of time to have the applicant provide an

1 additional meal.

2 (Laughter.)

3 HEARING OFFICER GEFTER: Okay, can we  
4 take all this off the record?

5 (Laughter.)

6 HEARING OFFICER GEFTER: Off the record.

7 (Off the record.)

8 HEARING OFFICER GEFTER: For December  
9 4th we are intending to hear testimony on the  
10 topics of land use and traffic and transportation.

11 We will also hear the recommendations of  
12 staff on their analysis with respect to cumulative  
13 air quality impacts from the burning of fuel oil.

14 And we will also give the parties an  
15 opportunity to rebut staff's recommendation,  
16 whatever it might be. And we will see all that,  
17 the testimony on land use, traffic and  
18 transportation, and staff's recommendations on air  
19 quality, and staff's additional alternatives  
20 testimony which we will also hear on the 4th, will  
21 be filed December 1st.

22 And if the parties wish, staff will  
23 email that to the parties so they can see it ahead  
24 of time.

25 We also will hear rebuttal testimony



1 from Mr. Filippi, who will provide testimony in  
2 response to Mr. Weatherwax's testimony. Correct?

3 MR. CARROLL: That's correct.

4 HEARING OFFICER GEFTER: And we'll also  
5 hear testimony on compliance, essentially from the  
6 applicant. And then any other remaining issues  
7 that were pending, we'll discuss them on the 4th.

8 December 4th is a teleconference, we are  
9 providing a toll free number for people to call  
10 who don't want to travel up to Sacramento.

11 The hearing will begin at 1:00 p.m. And  
12 we expect to be finished by 5:00 we hope on that  
13 day.

14 Hearing no other comments at this time,  
15 this hearing is adjourned.

16 (Whereupon, at 4:05 p.m., the hearing  
17 was adjourned, to reconvene at 1:00  
18 p.m., Monday, December 4, 2000, at  
19 Sacramento, California.)

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## CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of November, 2000.

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